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2
3 CONSTITUTIONAL CONVENTION
4 OF THE
5 STATE OF MARYLAND
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10 Chamber of the House of Delegates
11 State Capitol
12 Annapolis, Maryland
13 December 27, 1967 - 2:20 p.m.
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16
17 HONORABLE H. VERNON ENEY,
18 PRESIDENT

19 Reported by:

20 C. Hurban
and

21 D. Fitzgerald

P R O C E E D I N G S

December 27, 1967 - 2:20 p.m.

THE PRESIDENT: The Convention will please
come to order.

The invocation today will be offered by the
Reverend Francis Reinberger of The Evangelical Lutheran
Church of Frederick, Delegate Barrick's minister.

Reverend Reinberger.

REVEREND REINBERGER: Almighty God, Father of
light, and Fountain of all wisdom, who has united us in
families and states and nations, so that the needs, the aims,
the ideals of a fraternity of mankind may be fulfilled; we
thank you for your gift of law whereby man is taught your
will and enabled to live together in peace; and we ask of
you this day your guidance over these, your servants, who
strive to create for our commonwealth a new basic foundation
of law; may their efforts be directed by the principles of
justice and truth between man and man, between class and
class, for health, charity, and the furtherance of good-
will; may the inspiration of your Spirit rest upon them.
And to all of us, the citizens of this free state, grant



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1 the clear vision of a pure social life, and the wisdom
2 and desire to pursue it loyally, that our State, in its
3 industry and commerce, in its education and art, in its
4 religion and government may be found to be following that
5 which is beautiful and true and good; to the glory of
6 your holy and blessed Name. Amen.

7 THE PRESIDENT: Roll call.

8 (Whereupon, a roll call was taken.)

9 THE PRESIDENT: Have all delegates answered roll
10 call?

11 The Clerk will record the roll call and also
12 record Delegate Kosakowski present. His switch is not
13 working.

14 There being a quorum present, the Convention is
15 in session.

16 The Chair recognizes Delegate Powers.

17 DELEGATE POWERS: Mr. President, I move
18 that today's calendar and agenda be adopted so as to provide
19 an additional item under Item 5 -- that is, report of
20 the Committee of the Whole No. 30 as to Committee Recommend-
21 ation GP-11, Separation of Powers, and, as amended, that the

1 calendar and agenda be adopted.

2 THE PRESIDENT: Is there a second?

3 (Whereupon, the motion was duly seconded.)

4 THE PRESIDENT: All in favor of the motion
5 signify by saying Aye; contrary, No.

6 The Ayes have it, it is so ordered. The
7 calendar is amended and, as amended, is adopted.

8 Reports of standing committees. Report to
9 the Committee of the Whole No. 33. The Clerk will read
10 the report.

11 MR. QUILLEN: Report of the Committee of the
12 Whole No. 33.

13 This Report covers matters in General Order
14 No. 13, Committee Recommendation No. GP-5, Delegate
15 Proposal No. 237.

16 A report on Committee Recommendation GP-5
17 (State Jurisdiction over Federal Enclaves).

18 THE PRESIDENT: The report has heretofore
19 been referred to the Committee on Calendar and Agenda.

20 Report of the Committee on Style, Drafting and
21 Arrangement -- No. 29. The Clerk will read the report.

1 MR. QUILLEN: Report of the Committee of the
2 Whole No. 32. This report covers matters in General
3 Order No. 29, Committee Recommendation No. GP-12.

4 December 20, 1967. Presented, read, and referred
5 to the Committee on Style, Drafting and Arrangement: By
6 order, Ira J. Wagonheim, Chief Clerk.

7 Title. A report on Committee Recommendation
8 GP-12 (Effective Date of Constitution).

9 THE PRESIDENT: The report is referred to the
10 Committee on Calendar and Agenda.

11 I call to your attention it will be on the
12 agenda for action tomorrow. Please keep in mind the
13 procedure that we are following with respect to these
14 reports on second reading, amendments be in the hands of
15 the Clerk at least three hours prior to the session in
16 order to have priority of recognition, and the other
17 rules as to recognition of persons desiring to speak.

18 Are there any other reports?

19 MR. QUILLEN: That is all, sir.

20 THE PRESIDENT: The Chair recognizes
21 Delegate Penniman on a matter of personal privilege.

1 DELEGATE PENNIMAN: Mr. President, I would like
2 the Convention to join me in welcoming here today Mrs.
3 David Phillips, who is the wife of our very able and very
4 hard-working staff advisor to the Committee on Style, Draft-
5 ing and Arrangement. (Applause.)

6 THE PRESIDENT: Delegate Beachley.

7 DELEGATE BEACHLEY: Mr. President, I would like
8 to ask the Convention to extend its usual warm welcome to
9 my childhood friend Miss Rachel Sheetz, who is the
10 **head of the** English Department of the Hagerstown Junior
11 College. She is seated in the balcony at the rear of
12 the auditorium. I might add Miss Sheetz is another one
13 of the former teachers of Delegate Elroy Boyer.

14 THE PRESIDENT: We are delighted to have her.
15 Delegate Cardin.

16 DELEGATE CARDIN: Mr. President and fellow
17 delegates, I should like to announce the presence
18 in the rear gallery of Jay and Jeffrey Szymanski of Rider-
19 wood, Baltimore County. I am sure they will benefit from
20 our deliberations and we greet them most cordially. (Applause.)

21 THE PRESIDENT: Delegate Harry Taylor.

1 DELEGATE H. TAYLOR: Personal privilege.

2 THE PRESIDENT: State your privilege.

3 DELEGATE H. TAYLOR: In the gallery, appropriately
4 above Delegate Wilson, Speaker of the House of Delegates, we
5 have from Prince George's County Miss Ann Higgins and Mrs.
6 Pat Echols. Mrs. Higgins is secretary to the Prince
7 George's County delegation, and Mrs. Echols will assist
8 her. They are going to move in down here January 14 when
9 we move out. I hope you will all join me in welcoming
10 them. (Applause.)

11 THE PRESIDENT: Delegate Adkins.

12 DELEGATE ADKINS: Mr. President, I should like the
13 convention to welcome a distinguished member of the
14 Salisbury City Council, Mr. Samuel Seidel, sitting in the
15 balcony facing the rostrum, together with Mrs. Seidel and
16 their three children, who are here in the hopes they will
17 learn something from these deliberations. (Applause.)

18 THE PRESIDENT: Delegate Wheatley.

19 DELEGATE WHEATLEY: Mr. Chairman, on personal
20 privilege, I would like to introduce four of my very
21 severest critics seated in the gallery to the rear of the

1 rostrum, my daughter Shirley, who is three, my sone Craig who
2 is 7, and my son Charles, Jr., who is 9, and my wife
3 Shirley who is ageless. (Applause.)

4 THE PRESIDENT: Delegate Stern.

5 DELEGATE STERN: Mr. President, seated in the
6 gallery above you is the wife of Delegate Sosnowski, Rene
7 Sosnowski, and her sister, Doris Hurman. (Applause.)

8 THE PRESIDENT: Delegate Boileau.

9 DELEGATE BOILEAU: Mr. President and fellow
10 Delegates, I hope the convention will welcome a young
11 political scientist and student at Xavier University in
12 Ohio, my brother-in-law William Schrott. (Applause.)

13 THE PRESIDENT: Delegate Koss.

14 DELEGATE KOSS: I hope the convention will join
15 me in welcoming in the gallery above the rostrum Mrs. Allen
16 Cole, who is president of the League of Women Voters of
17 Montgomery County, with her two sons, here today observing
18 our deliberations. (Applause.)

19 THE PRESIDENT: Delegate Barrick.

20 DELEGATE BARRICK: Mr. President, I wish the
21 delegates to welcome also to this convention Mrs. Francis

1 Reinberger, wife of Pastor Reinberger who just gave the
2 invocation, and her son Mark. (Applause.)
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1 THE PRESIDENT: The next item on the calendar
2 for consideration is the Report of the Committee of the
3 Whole No. 30. This is the report with respect to Committee
4 Recommendation GP-11 which was considered in the Committee
5 of the Whole. The Committee Recommendation was not approved.
6 This is a recommendation dealing with separation of powers.
7 It is before the convention now for action on the Committee
8 Recommendation in the light of the recommendation of the
9 Committee of the Whole.

10 The question now rises on the adoption of
11 Committee Recommendation GP-11 notwithstanding the adverse
12 report or the report of the Committee of the Whole failing
13 to approve it.

14 Is there any discussion? Are you ready for the
15 question?

16 The question arises on the adoption of Committee
17 Recommendation GP-11 notwithstanding the adverse report
18 of the Committee of the Whole.

19 A vote Aye is a vote in favor of the Committee
20 Recommendation against the report of the Committee of the
21 Whole. A vote No is a vote against the Committee

1 Recommendation and **sustains** the report of the Committee of
2 the Whole.

3 Cast your votes.

4 (Whereupon, a roll call was taken.)

5 THE PRESIDENT: Has every delegate voted?
6 Does any delegate desire to change his vote?

7 Delegate Miller?

8 DELEGATE BEATRICE MILLER: I am sorry, sir,
9 but some of us are still confused as to which way we vote
10 if we want to keep the recommendation or not keep it. Could
11 you explain it?

12 THE PRESIDENT: A vote Aye is a vote in favor
13 of the Committee Recommendation which would retain the
14 recommendation would be contrary to the recommendation of
15 the Committee of the Whole. A vote no is a vote against
16 the Committee Recommendation, would sustain the recommendation
17 of the Committee of the Whole.

18 In other words, the Committee of the Whole
19 recommended that it not be approved.

20 Has every delegate voted? Does any delegate
21 desire to change his vote? The Clerk will record the

1 vote. There being 29 votes in the affirmative and 88
2 in the negative, the Committee recommendation is not approved.

3 Delegate Kosakowski's button not working, you
4 cast your vote on the last vote in what manner?

5 DELEGATE KOSAKOWSKI: No.

6 THE PRESIDENT: He case his vote No. The
7 vote on the last is 29 affirmative and 89 in the negative.

8 The next item on the calendar is a similar
9 report, Report No. 33 of the Committee of the Whole with
10 respect to Committee Recommendation No. GP-5. This
11 recommendation also was not approved by the Committee of
12 the Whole.

13 The question now arises on the approval of the
14 committee recommendation notwithstanding the adverse
15 report of the Committee of the Whole.

16 Is there any discussion? Are you ready for
17 the question?

18 The question arises on the adoption of
19 Committee Recommendation No. GP-5. A vote Aye is a
20 vote in favor of the Committee Recommendation against
21 the report of the Committee of the Whole. A vote No

1 is a vote against the committee recommendation in favor of the
2 report of the Committee of the Whole.

3 This is the recommendation that deals with
4 Federal enclaves.

5 Is there any question? A vote Aye is a vote in
6 favor of the Committee Recommendation against the report of the
7 Committee of the Whole. A vote No is a vote against the
8 Committee recommendation in favor of the report of the
9 Committee of the Whole.

10 (Whereupon, a roll call vote was taken.)

11 THE PRESIDENT: Delegate Kosakowski, will you
12 announce your vote in the microphone, sir?

13 DELEGATE KOSAKOWSKI: I would like to be
14 recorded as No.

15 THE PRESIDENT: Has every delegate voted?
16 Does any delegate desire to change his vote? The Clerk
17 will record the vote.

18 There being 25 votes in the affirmative and
19 94 in the negative, the motion is lost. Committee
20 Recommendation No. GP-5 is not adopted.

21 The next item on the calendar is the resumption

1 of the consideration of the report of the Committee on
2 Style, Drafting and Arrangement No. 7. This is the
3 report with respect to Committee Recommendation LG-1,
4 Local Government.

5 We had partially concluded a consideration of
6 the amendments recommended by the Committee on Style and
7 other amendments as to style.

8 At the last session of the convention we had
9 concluded a consideration of the amendments as to style
10 offered by the Committee and were considering other amend-
11 ments as to style offered from the floor. We had gone
12 through Section 7.07, and we are at Section 7.08.

13 For what purpose does Delegate Moser rise?

14 DELEGATE MOSER: Mr. President, merely to
15 call the Chair's attention to the fact that we were
16 considering Amendment No. 6 to 7.07 offered by Delegates
17 Moser, Koss, Neumann and Sybert. You had asked the
18 Style, Drafting and Arrangement Committee to look it over
19 over the weekend and we, too, look it over.

20 THE PRESIDENT: Yes, I was in error in saying
21 that we had concluded 7.07. Amendment 6 deals with

1 Section 7.07, and that was the amendment under consideration.

2 Delegate Moser?

3 DELEGATE MOSER: I do have, if you are ready
4 to start discussion of it, one comment to make with respect
5 to it.

6 THE PRESIDENT: Very well, you may proceed.

7 DELEGATE MOSER: Two comments. Number one, I
8 understand that Style, Drafting and Arrangement hasn't come up
9 with any change to it that they would suggest, but I would
10 make this observation that on reflection I think that
11 Amendment No. 6 is not really necessary because of the
12 provisions of Section 3.01 of the legislative branch article
13 granting plenary legislative power to the General Assembly.

14 I think that because of this the General Assembly
15 could withdraw powers from municipalities, and I point out
16 what I answered in response to Judge Sybert's initial
17 remarks, and that is that this speaks -- Section 7.07
18 as it is now drafted -- in terms of positive power, granting
19 positive power.

20 Therefore, whether it is passed or not, I think
21 it will have the same result.

1 THE PRESIDENT: I think it might be helpful,
2 in view of the fact that several days have intervened
3 since the last discussion, if you would elaborate on that just
4 a little bit more, Delegate Moser.

5 The way the Chair understands what you are
6 saying, you would propose now to withdraw your Amendment
7 No. 6?

8 DELEGATE MOSER: No, Mr. President, I am not
9 in a position to withdraw it. I don't feel strongly
10 about it one way or the other, but I think that some of the
11 other sponsors wish it to be considered -- in fact,
12 I feel that I may be wrong as to the necessity of having
13 this. I am speaking for myself only when I say I do not
14 believe it is necessary.

15 I guess every delegate has it in front of him.
16 It is the one marked "H".

17 THE PRESIDENT: Let me, if I may, restate
18 what I understand your position to be. If I understood
19 you at all correctly, you are saying in your view
20 personally, at least, the last clause or phrase beginning
21 in the middle of line 19 and running to line 20 which

1 reads "and the granting authority may withdraw such powers"
2 would mean that the county could withdraw powers granted by
3 the county. The General Assembly could withdraw powers
4 granted by the General Assembly, but you point out that
5 under Section 3.01 the General Assembly in the exercise
6 of its plenary legislative power could withdraw powers
7 granted by the county..

8 Is that the position you take?

9 DELEGATE MOSER: That is correct, sir.

10 THE PRESIDENT: Delegate Clagett.

11 DELEGATE CLAGETT: Provided that the General
12 Assembly withdraw such a power from all municipalities.
13 It could not withdraw a power granted by the county to a
14 single municipality.

15 The General Assembly would have to act with
16 respect to all municipalities in the exercise of its plenary
17 power.

18 Mr. Chairman, I would like to withdraw my name
19 as one of the sponsors of Amendment No. 6 for the reason
20 that I think the original language in Section 7.07 is clear,
21 and if I may restate the way I interpret and understand

1 that language, and particularly with respect to line 19,
2 the phrase "and the granting authority may withdraw such
3 powers". It is inconceivable to me that a court could
4 interpret that phrase to in any way restrict the plenary
5 power of the General Assembly to withdraw powers from
6 counties or to withdraw powers from the municipalities
7 in the exercise of that plenary authority.

8 Of course the General Assembly, in withdrawing
9 powers from either a county or counties -- and I would
10 like to strike that "a county" -- in the exercise of
11 its plenary power to withdraw powers it would have to
12 withdraw from all counties.

13 Similarly, in withdrawing power from a
14 municipality, it would have to withdraw the power from
15 all municipalities.

16 As written here, there is no way that I can
17 see that a court could construe that phrase to be a
18 limitation upon that plenary power. It does, however,
19 as it is written, clearly indicate that where an additional
20 power has been granted by a county to a single municipality,
21 only the county can withdraw the power from that single

1 municipality.

2 When the General Assembly acts, it would have
3 to act with respect to all municipalities in order to catch
4 that one county. Therefore, finding that the language
5 in eight words says exactly what 37 words are required to say
6 in the amendment, I would, in the interest of simplicity,
7 withdraw my support of that amendment.

8 THE PRESIDENT: Delegate Carson.

9 DELEGATE CARSON: Mr. Chairman, ladies and
10 gentlemen, this amendment before you was prepared after
11 Judge Sybert, after reading these sections, personally
12 felt that they were unclear.

13 I think there is considerable question as to
14 the clarity of Section 7.07 as it now reads. I think
15 a court could well construe the language here to say
16 exactly what it says, that the granting authority may with-
17 draw such powers and to read that to mean that only the
18 granting authority may withdraw such powers. If the court
19 so reads the language, then in that event the General
20 Assembly would be forbidden from taking away certain powers
21 from municipalities.

 Our committee intended, and Delegates Moser

1 and Clagett both intend that the General Assembly have
2 plenary authority in this area. I think the amendment
3 makes our intention clear. I think a child or a person
4 of reasonable years could read the language in the amendment
5 and understand it, but if you have to make the elaborate
6 cross reference to justify Delegate Clagett, and I am not
7 sure I understand what he said, then I think we are in
8 trouble.

9 I think it would be much better to use the
10 additional language and make clear once and for all what
11 we say in this section. I urge that you vote for the
12 amendment to clarify this without making any substantive
13 change whatsoever.

14 THE PRESIDENT: Delegate Moser, do you withdraw
15 your sponsorship of the amendment or desire to let it
16 remain?

17 DELEGATE MOSER: Mr. President, I will let it
18 remain. I am going to vote against it.

19 THE PRESIDENT: Strike out the name of Delegate
20 Clagett as one of those sponsoring the amendment.

21 Is there any further discussion of the amendment?

1 Delegate Willoner.

2 DELEGATE WILLONER: This was amended after the
3 word "by", wasn't it, on line 7?

4 THE PRESIDENT: Yes, the amendment has been
5 modified so that in line 7 the word "it" has been stricken
6 and in lieu thereof the words "the county by law" have been
7 inserted.

8 Is there any further discussion?

9 (There was no response.)

10 THE PRESIDENT: Are you ready for the question?
11 The question arises on the adoption of Amendment No. 6 as
12 modified. A vote Aye is a vote in favor of the amendment.
13 A vote No is a vote against.

14 Cast your votes.

15 (Whereupon, a roll call vote was taken.)

16 THE PRESIDENT: Has every delegate voted? Does
17 any delegate desire to change his vote?

18 The Clerk will record the vote.

19 There being 51 votes in the affirmative and 60
20 in the negative, the motion is lost. The amendment is
21 rejected.

1 Are there any other amendments as to style
2 with respect to Section 7.07, amendments to style only?

3 (There was no response.)

4 THE PRESIDENT: The Chair hears none.

5 Are there any amendments as to style only with
6 respect to Section 7.08?

7 Your amendment G is intended to be an amendment
8 of style only, Delegate Moser?

9 DELEGATE MOSER: Yes, but we don't care to
10 offer that one. There is a substitute, I think, that
11 is there, and it is "M". There was a technical defect
12 in G which I caught over the weekend.

13 THE PRESIDENT: The pages will distribute
14 Amendment M -- M for Mary.

15 The Clerk will read the amendment.

16 MR. QUILLEN: Amendment No. 7 as amended by
17 Report S&D-7 to Committee Recommendation No. LG-1 by
18 Delegates Moser and Carson.

19 On page 4 Section 7.08, title "Establishment
20 of Multi-County Governmental Units", in line 39 strike
21 out the word "law" and insert in lieu thereof the following

1 words: "of these laws".

2 THE PRESIDENT: The amendment is submitted by
3 Delegate Moser, seconded by Delegate Carson.

4 The Chair recognizes Delegate Moser.

5 DELEGATE MOSER: Mr. President, the purpose
6 of this is to take care of the problem that Delegate
7 Willoner raised so that the sentence commencing on page 4,
8 line 38, Section 7.08, will read "The General Assembly may
9 provide for referenda on any of these laws pertaining to
10 a popularly-elected representative regional government",
11 "these laws" referring back to alteration of boundaries
12 or for the powers or merger or dissolution of popularly-
13 elected representative regional governments.

14 That is the sole purpose of the amendment.

15 THE PRESIDENT: Delegate Moser, the Chair is
16 unclear on one matter that was discussed the other day.
17 I don't know whether it was intended to touch on it with
18 this amendment or not -- I don't think so -- that is the
19 question of whether under the last sentence beginning on
20 line 38 it is intended that the General Assembly may by
21 general law provide for referenda in the future on laws

1 pertaining to popularly elected representative regional
2 governments or whether this section is intended to provide
3 authority for the General Assembly only to provide, on the
4 law being referred, for the referendum.

5 Can you tell which was intended by the committee?

6 DELEGATE MOSER: Yes, Mr. President, I think
7 I answered that the last time and I would answer it the
8 same way. It relates to the law and has nothing to do
9 with whether it is a general law or what have you. It
10 permits the General Assembly to provide any kind of referenda
11 that it wants to provide, local referenda, that is, with respect
12 to a law providing for the establishment, merger or dis-
13 solution of popularly elected representative regional
14 governments or for the alteration of their boundaries or
15 for the powers which they may exercise. Of course, those
16 laws are not necessarily general laws.

17 THE PRESIDENT: I don't believe you are answering
18 the question I asked, and that is whether this sentence
19 is intended to authorize the General Assembly to provide
20 for the referendum only on the law being referred, or whether
21 it is intended to authorize the General Assembly to provide

1 generally for referendum of laws to be enacted thereafter
2 dealing with this subject matter.

3 Delegate Moser.

4 DELEGATE MOSER: Mr. President, in the law
5 that is being referred on a case by case basis it was not
6 intended they might provide generally for referenda --
7 by this provision, that is.

8 THE PRESIDENT: Very well.

9 Delegate Carson.

10 DELEGATE CARSON: Mr. Chairman, I agree, and I
11 think the words "of these laws" referring back make that
12 clear.

13 THE PRESIDENT: Very well.

14 Are there any questions of the sponsor of
15 the amendment? Is there any discussion?

16 Delegate Penniman, any comment?

17 DELEGATE PENNIMAN: I have no objection to the
18 proposed change.

19 THE PRESIDENT: When we had this matter under
20 consideration several days ago the Chair called attention
21 to the fact that some copies which had been distributed

1 had inadvertently a page 4 which had been rewritten.

2 Will you please look at the page 4 that you have
3 and see if in line 39 it has the word "pertaining". If
4 it does not have that word, please destroy it, raise your
5 hand and we will send you another copy.

6 I make this point because the old copy already
7 has the language to be inserted by this amendment.

8 Delegate Bamberger.

9 DELEGATE BAMBERGER: Mr. President, because
10 this is a section about which there was some confusion in
11 the Amendment No. 7 on line 3, shouldn't that word "law"
12 be -- I take it the word stricken out was "laws", plural,
13 on line 39, is that right?

14 THE PRESIDENT: I didn't hear that. Shouldn't
15 what?

16 DELEGATE BAMBERGER: Line 3 of the amendment
17 says "strike out the word 'law'," singular.

18 THE PRESIDENT: That is right.

19 DELEGATE BAMBERGER: In the copy I have, that
20 appears to be plural.

21 THE PRESIDENT: Read line 39 in the copy you

1 have, will you, please?

2 DELEGATE BAMBERGER: Well --

3 THE PRESIDENT: Read everything, whether it is
4 stricken or not. Just read me line 39.

5 DELEGATE BAMBERGER: "For on any of these laws"--

6 THE PRESIDENT: You have the wrong copy. It
7 does not have the word "pertaining". Will you please
8 destroy it, and will a Page please give Delegate Bamberger
9 a new copy?

10 Any other delegate who on page 4 in line 39
11 has a copy which does not have the word "pertaining" please
12 destroy it.

13 Are there any other delegates with the wrong
14 copy?

15 Are you ready for the question? The question
16 now rises on the adoption of Amendment No. 7. Is there
17 any further discussion? Are you ready for the question?

18 The question arises on the adoption of Amendment
19 No. 7. A vote Aye is a vote in favor of the amendment.
20 A vote No is a vote against.

21 Cast your votes.

1 (Whereupon, a roll call vote was taken.)

2 THE PRESIDENT: Has every delegate voted?

3 Does any delegate desire to change his vote? The Clerk
4 will record the vote.

5 There being 108 votes in the affirmative and
6 one in the negative, the motion is carried. The amendment
7 is adopted.

8 Any other amendments with respect to style on
9 Section 7.08?

10 Delegate Moser, I take it your Amendment BD will
11 not be offered?

12 DELEGATE MOSER: That is correct, sir.

13 THE PRESIDENT: And Delegate Carson, your
14 Amendment BE will not be offered?

15 DELEGATE CARSON: Mr. Chairman, I do not intend
16 to offer it at this time. I doubt that I will ever offer it.

17 THE PRESIDENT: Very well. Are there any other
18 amendments with respect to style as to 7.08?

19 (There was no response.)

20 THE PRESIDENT: The Chair hears none.

21 Are there any amendments as to style with

✓ 1 respect to 7.09? Are there any amendments to style
2 with respect to Section 7.10?

3 Delegate Moser.

4 DELEGATE MOSER: Mr. President, you should have
5 one up there. I have no idea what the letter is because
6 I have not had it delivered to me.

7 THE PRESIDENT: "I", is that it?

8 The Pages will distribute Amendment I -- I for
9 Item.

10 The Clerk will read the amendment.

11 MR. QUILLEN: Amendment I, as Amended by
12 Report No. S&D-7 to Committee Recommendation No. LG-1,
13 by Delegates Moser, Adkins, Barrick, Blair, Boileau,
14 Bryson, Clagett, Eckenrode, Freeland, Grant, Leitzel,
15 Macdonald, Needle, Sollins, Ulrich, Wagandt and Winslow.

16 On page 5 Section 7.10 Credit Limitations of
17 Local Governments strike out all of lines 11 through 15,
18 inclusive, and insert in lieu thereof the following:
19 "The assets or credit of a unit of local government shall
20 not be given or lent to any individual, association, or
21 corporation unless a public purpose will be served thereby,

1 subject to any other restrictions provided by law."

2 THE PRESIDENT: Delegate Penniman, have you
3 seen this amendment heretofore?

4 DELEGATE PENNIMAN: No, I had not seen it.
5 Delegate Moser had told me in general about it.

6 THE PRESIDENT: It seems to me that it is
7 subject to almost the same difficulties as the language
8 which it supersedes. The only change, Delegate Moser,
9 is to change the position of the opening phrase?

10 DELEGATE MOSER: And, Mr. President, to add
11 the word "other" in line 8 of the amendment. You are
12 correct, though, except for that. In other words, the
13 "subject to" provision is put at the end of the sentence,
14 as suggested by Delegate Adkins, I believe, on Thursday,
15 and the word "other" to make clear that we are talking
16 about any additional restrictions has been inserted.
17 It is merely a clarifying amendment. It does not have
18 the problem of the double negative Delegate Adkins
19 referred to -- at least I think it doesn't.

20 THE PRESIDENT: The amendment has been
21 submitted by Delegate Moser and seconded by the other

1 sponsors. Did you want to add any other comment, Delegate
2 Moser?

3 DELEGATE MOSER: No, sir.

4 THE PRESIDENT: Delegate Penniman, have you
5 had a chance to look at it yet?

✓ 6 DELEGATE PENNIMAN: I think that "to any other
✓ 7 restrictions" clarifies it to some extent, but it is still
8 open to some question, it seems to me. I don't come up
9 with the words right offhand.

10 THE PRESIDENT: Would it help, Delegate Moser
11 and Delegate Penniman, both, if you rearranged the last
12 two phrases so that the sentence would read somewhat like
13 this -- "The assets or credit of a unit of local government
14 shall not be given or lent to any individual, association
15 or corporation except subject to such restrictions as may
16 be prescribed by law and also a public purpose will be
17 served thereby", in order to get the word "except" in?

18 DELEGATE MOSER: Mr. President, we have struggled
19 with this and struggled with it. I must say that I do
20 not think that that improves it.

21 THE PRESIDENT: My difficulty with the sentence

1 is if you leave out the phrase "unless a public purpose
2 will be served thereby" I don't think the rest is
3 grammatical. It would then read "the assets or credit
4 of a unit of local government shall not be given or lent to
5 any individual subject to any other restrictions provided
6 by law", unless you put some qualifying word I don't believe
7 it is coherent as a sentence.

8 DELEGATE MOSER: Mr. President, I am happy
9 to let Style, Drafting and Arranging look at it, if this
10 is possible.

11 Let me make one suggestion. Possibly the
12 insertion in line 8 between "thereby", after the comma,
13 before the word "subject", the word "and" might take care of
14 the problem that you raised.

15 THE PRESIDENT: I don't believe it would.
16 If you test it by leaving out the "unless" clause, you
17 will have the same problem.

18 May the Chair suggest, because there isn't an
19 opportunity for this to be rereferred to the Committee on
20 Style, that the Committee staff could struggle with this
21 a little bit and let us pass the amendment and come back to

1 it in a very few minutes. Is Mr. Phillips here? Is
2 this agreeable? Is there any objection? If not, we will
3 pass over Amendment No. 8 for the time being.

4 Are there any amendments on style, other
5 amendments with respect to style of Section 7.10? The
6 Chair hears none.

7 Any amendments with respect to style as to the
8 unnumbered section to be included in Article 8?

9 Delegate Clagett.

10 DELEGATE CLAGETT: I think if we took the
11 phrase "subject to any other restrictions provided by law"
12 and moved it --

13 THE PRESIDENT: Pass that along to Delegate
14 Penniman, because we are on another section, now.

15 Are there any other amendments as to style with
16 respect to the unnumbered section included in Article 8?
17 The Chair hears none.

18 Delegate Penniman, could the Chair suggest
19 in line 8, after "thereby" you insert the words "and then
20 only"? Would that help?

21 Delegate Clagett, can you pass your suggestion

1 along?

2 DELEGATE CLAGETT: Let me find it again, Mr.
3 Chairman. I had passed it over.

4 It was to take the phrase "subject to any
5 other restrictions provided by law" and move it up to line
6 7 between "corporation" and "unless", and have it read
7 "except subject to any other restrictions provided by law
8 and unless a public purpose will be served thereby".

9 THE PRESIDENT: That is what I suggested
10 before, I think.

11 Delegate Penniman, do you have a suggestion?

12 DELEGATE PENNIMAN: It seems to me the
13 suggestion which you made covers the problem.

14 THE PRESIDENT: Which one?

15 DELEGATE PENNIMAN: The one that you made
16 where you said "subject to any restrictions provided
17 by law", inserting after "thereby", "and then only".
18 It would probably be easier if I were sitting in the
19 other room rather than with ten people here.

20 THE PRESIDENT: Well, come ahead.

21

1 Delegate Penniman.

2 DELEGATE PENNIMAN: Mr. President, we have sug-
3 gested changing it to a positive statement, or to begin with
4 a positive statement, "The assets or credit of a unit of
5 local government may be given or lent to any individual,
6 association, or corporation only if a public purpose will
7 be served thereby and then subject to any other restric-
8 tions as prescribed by law."

9 THE PRESIDENT: Delegate Moser, do you accept the
10 suggested modification?

11 DELEGATE MOSER: Yes, sir.

12 THE PRESIDENT: Do any of the other sponsors
13 object to the suggested modifications?

14 Is there any objection to considering the
15 amendment as modified by striking the words "shall not"
16 in line 5 and inserting the word "may"; striking the word
17 "unless" in line 7 and inserting the words "only if";
18 and in line 8, after the comma, inserting the words "and
19 then"; and in line 9 changing the word "provided" to
20 "prescribed"?

21 Is there any objection to these changes?

1 The Chair hears none. The amendment will be
2 considered as so modified.

3 Is there any other discussion?

4 Delegate Henderson.

5 DELEGATE HENDERSON: I am wondering why they used
6 the word "prescribed" which they struck out of the Judicial
7 Article and always said "provided by law". I thought that
8 is what they adopted, the Committee on Style adopted.

9 THE PRESIDENT: Delegate Penniman.

10 DELEGATE PENNIMAN: Delegate Henderson, this is
11 a problem which will return when we are discussing Article
12 V, and we will modify, or I will propose we modify it to go
13 to "prescribe" throughout.

14 THE PRESIDENT: Is there any other discussion?

15 Are you ready for the question?

16 The question arises on the adoption of Amendment
17 8.

18 Delegate Gill.

19 DELEGATE GILL: Will you please read the entire
20 amendment?

21 THE PRESIDENT: The amendment will be to strike

1 out lines 11 through 15 inclusive, and in lieu of those
2 to insert the following:

3 "The assets or credit of a unit of local govern-
4 ment may be given or lent to any individual, association,
5 or corporation only if a public purpose will be served
6 thereby, and then only subject to any other restrictions
7 prescribed by law."

8 Any other questions?

9 Are you ready for the question?

10 The question arises on the adoption of Amendment

11 8. A vote Aye is a vote in favor of the amendment as
12 modified. A vote No is a vote against.

13 Cast your votes.

14 Has every delegate voted? Does any delegate de-
15 sire to change his vote?

16 The clerk will record the vote.

17 There being 98 votes in the affirmative and
18 5 in the negative, the motion is carried. The amendment is
19 adopted.

20 This would conclude the amendments as to style
21 only. The question now arises on the adoption of

1 Committee Recommendation LG-1 with the amendments as to
2 style recommended by the Committee on Style, Drafting
3 and Arrangement, and contained in its report S&D-7, and
4 with the amendments as to style embraced in Amendments 1-8.
5 This is not the final adoption on second reading, but the
6 adoption of the amendments as to style.

7 Are you ready for the question?

8 A vote Aye is a vote in favor of the adoption of
9 all the amendments as to style recommended by the Committee
10 on Style, plus the eight amendments offered from the floor.
11 A vote Aye is a vote in favor of all these amendments. A
12 vote No is a vote against.

13 Cast your vote.

14 (Whereupon, a roll call vote was taken.)

15 THE PRESIDENT: Has every delegate voted? Does
16 any delegate desire to change his vote?

17 The clerk will record the vote.

18 There being 102 votes in the affirmative and 2
19 in the negative, the motion is carried and all the amend-
20 ments as to stype are adopted.

21 The Committee Recommendation LG-1 as amended is

1 now open to amendments of substance.

2 Are there any such amendments with respect to
3 section 7.01?

4 The Chair hears none.

5 Are there any amendments as to section 7.02?

6 The Chair hears none.

7 Are there any amendments as to section 7.03?

8 The Chair hears none.

9 Are there any amendments as to section 7.04?

10 Delegate Hanson.

11 DELEGATE HANSON: Mr. Chairman, I had originally
12 prepared an amendment to section 7.04. I want to withdraw
13 that amendment, or rather, not offer that amendment, but if
14 I may have the permission of the Chair, I would like to ask
15 a question of the Chairman of the Committee on Local Govern-
16 ment which will reveal the reason for my withdrawal of the
17 amendment.

18 THE PRESIDENT: Delegate Moser, will you take
19 the floor to yield to a question?

20 DELEGATE MOSER: I will.

21 THE PRESIDENT: Delegate Hanson.

1 DELEGATE HANSON: Chairman Moser, I should like
2 to make clear for the record the significance of this
3 section 7.04, which gives power to the counties.

4 Is my understanding of this section correct
5 that what it does is to permit the counties to perform any
6 function or exercise any power other than the judicial power
7 or the tax power, as explained later in the section, unless
8 that function or power has been denied by the Constitution
9 or the local government's instrument of government -- meaning
10 that it has been denied expressly -- or it may not exercise
11 that power if that power is inconsistent with the Constitu-
12 tion or the charter; or if the legislature has withdrawn the
13 power and transferred it exclusively to another unit of
14 government; or, finally, if the power or function has
15 been denied expressly by law; or the exercise of that power
16 or function has been found to be inconsistent with some State
17 law enacted by the General Assembly?

18 THE PRESIDENT: Delegate Moser.

19 DELEGATE MOSER: Yes, that is correct.

20 When you say "found to be," you mean would be
21 inconsistent?

1 THE PRESIDENT: Delegate Hanson.

2 DELEGATE HANSON: That is my meaning.

3 THE CHAIRMAN: Delegate Moser.

4 DELEGATE MOSER: That is my understanding of the
5 meaning of this, and the committee's intention.

6 THE PRESIDENT: Delegate Hanson.

7 DELEGATE HANSON: Mr. Chairman, based on that,
8 I have no need to offer my amendment.

9 THE PRESIDENT: Very well.

10 Are there any other amendments of substance to
11 section 7.04?

12 Are there any amendments with respect to section
13 7.05?

14 Are there any amendments with respect to section
15 7.06?

16 Delegate Willis.

17 DELEGATE WILLIS: Mr. Chairman, a parliamentary
18 inquiry.

19 On 7.05 when we were discussing it last I
20 believe Delegate Case reserved the right to bring that up
21 again. I don't believe he is here.

1 Has that been taken care of, or will there be
2 an opportunity to do so in the future?

3 THE PRESIDENT: On 7.05, what is the question?

4 DELEGATE WILLIS: A question about the power
5 to tax, as I recall.

6 THE PRESIDENT: That would be under 7.04.

7 DELEGATE WILLIS: That is 7.04, that is correct.
8 I am sorry.

9 THE PRESIDENT: I think the problem that was
10 mentioned by Delegate Case would come up on consideration
11 of the report of the Committee on Style with respect to one
12 of the committee recommendations of the Committee on State
13 Finance and Taxation -- I am not sure which number -- and
14 I would assume that if the view expressed by Delegate Case
15 was not concurred in by the Committee on Style and Delegate
16 Case's view prevailed at the time the committee recommenda-
17 tion of the Committee on State Finance was under considera-
18 tion, it would then be inconsistent, perhaps, with section
19 7.04.

20 Section 7.04 could then be reconsidered by the
21 Convention, and that would be an appropriate time to do it.

1 I might add that under the rule any action of the
2 Convention may be reconsidered at any time on motion of
3 the Committee on Style, Drafting and Arrangement.

4 Are there any amendments to section 7.07?

5 The Chair hears none.

6 Are there any amendments to section 7.08?

7 The Chair hears none.

8 Are there any amendments to section 7.09?

9 The Chair hears none.

10 Are there any amendments to section 7.10?

11 The Chair hears none.

12 Are there any amendments to the unnumbered
13 section beginning on line 25 of page 5 to be a part of Arti-
14 cle VIII?

15 Delegate Hanson.

16 DELEGATE HANSON: Mr. President, I have a
17 question on the unnumbered section, if I may ask it, of
18 the Chairman of the Committee.

19 THE PRESIDENT: Delegate Moser, do you take the
20 floor to yield to a question?

21 DELEGATE MOSER: Yes, sir.

1 THE PRESIDENT: Delegate Hanson.

2 DELEGATE HANSON: Chairman Moser, reading section
3 7.08 and the unnumbered section together, am I correct in
4 assuming that notwithstanding the fact that section 7.08
5 expressly gives the General Assembly the power to provide by
6 law for a multi-county governmental unit, that
7 the unnumbered section under Article VIII would vest this
8 power concurrently with the counties insofar as they
9 have the power to perform any particular function?

10 In other words, if we had two counties that wanted
11 to provide a joint fire protection service, section 7.08
12 read in conjunction with the unnumbered section means that
13 while the General Assembly could provide a special purpose di-
14 rective for that function, it is also possible under the
15 unnumbered section for the two counties jointly to provide
16 that, and in that case section 7.08 would not contravene
17 that power?

18 THE PRESIDENT: Delegate Moser.

19 DELEGATE MOSER: Section 7.08 by itself would
20 not contravene that power, but the provision for Article VIII
21 reads: "A governmental unit except as limited by any law

1 may...", and if the General Assembly saw fit to pass a law
2 which limited what you suggested in your example, then the
3 two counties could not do that.

4 THE PRESIDENT: Is there any further question?

5 Delegate Hanson?

6 Any other questions?

7 Any amendments to the unnumbered section begin-
8 ning on line 28 of page 5?

9 The Chair hears none.

10 The question now arises on the adoption on second
11 reading of Committee Recommendation LG-1, as amended.

12 The clerk will please ring the quorum bell.

13 The question arises on the adoption of Commit-
14 tee Recommendation LG-1, as amended. A vote Aye is a vote
15 for the adoption on second reading of the Committee Recommen-
16 dation LG-1 as amended. A vote No is a vote against.

17 Cast your vote.

18 (Whereupon, a roll call vote was taken.)

19 THE PRESIDENT: Has every delegate voted? Does
20 any delegate desire to change his vote?

21 The clerk will record the vote.

1 THE PRESIDENT: There being 112 votes in the
2 affirmative and 5 in the negative, Committee Recommendation
3 LG-1 as amended is adopted on second reading.

4 The next item on the agenda is a consideration
5 of Committee Recommendation No. JB-1.

6 The Chair requests that Delegate Penniman, Chair-
7 man of the Committee on Style, come to the reading desk.

8 While he does that, I will ask the clerk to pass
9 up Committee Report S&D-1. This is the report of the
10 Committee on Style, Drafting, and Arrangement. The clerk
11 will read the report.

12 MR. QUILLEN: Committee on Style, Drafting, and
13 Arrangement Report S&D No. 10.

14 This Report covers matters in Committee of the
15 Whole Reports No. 12, 13, 14, and 15.

16 A Report concerning Committee Recommendation
17 Nos. SF-2, SF-3, SF-4, and SF-5.

18 THE PRESIDENT: The report is referred to the
19 Committee on Calendar and Agenda. This report and Committee
20 Recommendations SF-2, SF-3, SF-4 and SF-5 will go on
21 the calendar for second reading tomorrow. Please be sure

1 you get your copy so you may be able to offer any amend-
2 ments you desire to offer in ample time.

3 You should now have before you the Report No.
4 S&D-8 of the Committee on Style, Drafting, and Arrangement,
5 to which is appended Committee Recommendation JB-1 with the
6 amendments recommended by the Committee on Style.

7 The Chair recognizes Delegate Penniman.

8 DELEGATE PENNIMAN: Mr. Chairman, fellow delegates:
9 There is one small change on page 11, line 19, which any
10 number of people have called to my attention, and that is
11 the word "court" was not scratched out, the second word in
12 line 19.

13 Most of the chnages, as you will see, are relative-
14 ly simple changes, normally in arrangement, putting each of
15 the sections in chronological order.

16 We changed the "is" to "shall be" simply to con-
17 form which the other provisions.

18 We moved up section 5.03, the Rule Making Power
19 of the Court of Appeals, which had been described in section
20 5.31 as it came from the Committee of the Whole. We did
21 so because throughout the Article there is reference to the

1 rule making power of the Court of Appeals, and it seemed to
2 us desirable to state that power explicitly early in the
3 article so that it would be clear to the reader without
4 having to get the very last two lines, as it
5 had been in section 5.31.

6 In addition to that, we felt it desirable,
7 directly under the jurisdiction of the Court of Appeals,
8 to put in also the full Court of Appeals' rule making powers,
9 and that is the reason for the shift then of 5.31 to become
10 5.03.

11 The other changes are almost always to clarify
12 and involve relatively little change other than that.

13 There are no other changes in 5.04, save to
14 change a verb, and we have used throughout "consist of"
15 rather than "composed of" since consist is a more
16 precise term, which we discovered from checking the dic-
17 tionary. In 5.04 we also changed "decision of" to "decide".

18 There are no changes in 5.05.

19 In 5.06, I will get to the more general problem
20 of "provided" and "prescribed" later.

21 In 5.07 it seemed to us to increase clarity by

1 restating it with slight changes.

2 There is virtually no change then in 5.08, 5.09,
3 or 5.10.

4 In 5.11 we removed the words "as prescribed by
5 law or by rule" because now in 5.03 it is clear that
6 there is concurrent power on the part of the General Assembly
7 and the Court of Appeals, and it states that whichever one
8 is the latter with respect to a particular item shall be the
9 one which prevails.

10 This is also consistent with the decision
11 which was made on the floor of the Committee of the Whole
12 in section 5.07 where these words were removed in view of
13 the fact that they are already in, or were then in 5.31,
14 now in 5.03.

15 In 5.12 the words "or bail" and "pending hear-
16 ing" were put in. If you will remember, in the Committee
17 of the Whole there was some discussion of this, and an
18 amendment was proposed by Delegate Bothe. At one point
19 there was a question raised as to whether or not we should
20 include "or bail" and it was suggested that the Committee
21 on Style should check to see whether that might be

1 necessary, and we were to check with Delegate Bothe, and also
2 to make sure that the "pending hearing", if needed, would
3 be included.

4 We did check, and these are included. It is
5 still possible, I am told by my betters in the field of law,
6 that we may not need them; but we included them to be
7 absolutely certain.

8 In 5.14 it is almost exclusively a matter of
9 excluding words which were not needed in order to describe
10 the qualifications of judges at various levels.

11 Section 5.15, on Nomination and Appointment, is
12 one where we made a shift to get it all in chronological
13 order, but otherwise no change.

14 In section 5.16 there is no change except to add
15 the words "No member shall receive compensation
16 for his services." This was an amendment on the floor,
17 originally in one place, but to apply to all nominating
18 commissions we have it in two places where we talk about
19 the two kinds of nominating commissions, at the trial court
20 level as well as at the appellate court level.

21

1 We did not separate this into two sections.

2 To return to 5.18, again it is simply clarifying.
3 There is no major change. It is simply an attempt to make
4 perfectly clear what the functions of the selection of the
5 lawyer members should be.

6 Section 5.19, which was in the original committee
7 recommendation to the Committee of the Whole, was dropped
8 by the Committee of the Whole, so this is a renumbering
9 of the lay members of the nominating committee. I think
10 there is no change of significance to discuss.

11 In 5.20 we removed discussions and procedures and
12 left 5.20 merely to discuss the qualifications and
13 restrictions on members of the nominating committee, and then
14 put in a separate section the procedures of the nominating
15 commissions, thinking that this would be clarifying for the
16 reader. Again there is virtually no change with respect
17 to the judicial term of office.

18 In 5.23 there is a slight change that I
19 should perhaps call to your attention. It said originally
20 as it came from the floor from the Committee of the Whole,
21 "The chief judge of the Court of Appeals with the approval

1 of the majority of the members of that Court may authorize..."

2 It seemed to us clear from the discussion on the floor that
3 what was intended was that a majority of the court could
4 make the decision. In other words, the chief judge of the
5 Court of Appeals plus three more would make a majority of
6 the seven, rather than what would seem to be the other
7 possibility, that you needed a separate majority of four
8 along with the chief judge, making a total of five out of
9 seven, which I think was certainly not intended by the
10 Committee of the Whole.

11 I call it to your attention in case anyone does be-
12 lieve that it may have made a change in the decision of
13 the Committee of the Whole, in which case it could be brought
14 up on the floor to strike our changes.

15 In 5.24 it is simply to put the pension pro-
16 vision after that of compensation.

17 In 5.25 we put the word "political" in front of
18 "organization" because we wanted to make sure it was
19 clear political modified not only "party" but "organization",
20 and thus keep one from holding an office in any other
21 organization he might want to participate in.

1 The question of remuneration is taken care of else-
2 where clearly in 5.24, and therefore not needed again in
3 section 5.25.

4 The section on Judicial Disabilities I think
5 is clear without change except for the fact that "There shall
6 be no compensation..." is taken from 5.28 and moved up to
7 5.26, so we are again talking about limitations on the
8 members and not -- all in one place, processes and
9 procedures all in one place in 5.28.

10 The lines 25 to 27 on page 9 in 5.27 came from an
11 amendment that was made on the floor originally to 5.28,
12 but again we moved it up because of the order.

13 I don't believe there is any problem in the changes
14 that were made in 5.29 except to note that a fair portion of
15 those last two sentences on page 10, beginning "A judge is
16 removed under this section ...", and so on, had originally
17 been in 5.30.

18 What we have tried to do was to make sure that
19 retirement was separated from removal so there would not be
20 an accidental stigma attached.

21 I don't know that there were any further problems

1 in 5.30 or 5.31. We did indicate that administrative duties
2 could be given to other judges, rather than to use the
3 phrase "administrative judges shall perform," because we
4 did not understand it as creating the office of administra-
5 tive judges. We hoped by speaking of assigning administra-
6 tive duties we would not inadvertently create the offices of
7 administrative judges.

8 As to the clerks of the court, we simply reduced
9 the number of words. That is all that was done in the case
10 of 5.32.

11 Now, there is the large overall problem that
12 Delegate Henderson brought to our attention in connection
13 with the proposed amendment a while back to the Local Govern-
14 ment Article, and that is the use of the word "prescribed"
15 and "provided".

16 Delegate Marvin Smith called to our attention
17 the fact that he was having a problem with our use of 'pro-
18 vide" and "prescribed", and he sent us a dictionary defini-
19 tion which corresponds essentially with the definitions
20 that are given in "Black"; but if one goes beyond the first
21 two definitions of "prescribe" and "provide" in "Black's

1 Dictionary" one finds a phrase, "provided by law".

2 The phrase "provided by law" when used in a
3 constitution or a statute generally means prescribed
4 or provided by some statute. What becomes clear is that there
5 is no possibility, I think, of misunderstanding the word
6 "prescribed". There is some possibility of misunderstanding
7 the word "provide", which, as Delegate Marvin Smith pointed
8 out, might mean to supply a need or some other such meaning,
9 whereas the word "prescribe" really does mean to lay down
10 the rules for or the law with respect to.

11 It is the view of our committee that it would be
12 better to use the word "prescribed" throughout, and that
13 where we have previously used "provide," which we had
14 done in Article V where we had said always that rules of
15 the Court of Appeals would be prescribed, laws would provide,
16 that we probably should move to a uniform use of the word
17 "prescribe" for both laws and for rules, and to so follow
18 this, unless there is some obvious reason to the contrary,
19 throughout the Constitution.

20 THE PRESIDENT: Mr. Chairman, can you point out to
21 us, if your copy is marked, the particular places where

1 the amendment changing "prescribed" to "provide" is con-
2 tained, so we know where it is to be disregarded?

3 DELEGATE PENNIMAN: Delegate Bamberger assures me
4 it is 5.02, 5.06, and 5.10.

5 THE PRESIDENT: Line 19 of page 1, section 5.02.
6 Where is the next one -- 5.06?

7 DELEGATE PENNIMAN: Well --

8 THE PRESIDENT: 5.06, line 7, on page 3; line 47
9 on page 3, section 5.10.

10 Is there any other?

11 DELEGATE PENNIMAN: I suspect that there are
12 some others.

13 THE PRESIDENT: 5.11, line 4 on page 4; page 5,
14 line 49, in section 5.17.

15 DELEGATE PENNIMAN: That is correct.

16 Line 9 and line 27 on page 6.

17 THE PRESIDENT: Line 3, also -- lines 3, 9 and 27
18 on page 6.

19 That apparently is all of them.

20 Delegate Cardin.

21 DELEGATE CARDIN: I believe on page 11, in line

1 16, also.

2 THE PRESIDENT: Thank you; page 11, line 16.

3 Are there any others?

4 Delegate Marvin Smith.

5 DELEGATE M. SMITH: On page 10, Mr. President,
6 line 28.

7 THE PRESIDENT: Line 28, page 10.

8 Are there any others?

9 Delegate Neilson.

10 DELEGATE NEILSON: On page 3 you mentioned two
11 places, but I count three; lines 27, 34, and 47 on page 3.

12 THE PRESIDENT: Delegate Marion.

13 DELEGATE MARION: There is a place where the
14 word "provide" is used on page 2 that I don't think you
15 mentioned, on line 14.

16 THE PRESIDENT: Thank you.

17 Are there any others anyone has noted?

18 If not, the committee requests unanimous consent
19 to withdraw its suggested amendment to change the word
20 "prescribe" or "prescribed" into "provide" or "provided"
21 where it appears on line 19, page 1; line 14 on page 2;

1 lines 6, 27, 34 and 37 on page 3; line 4 on page 4; line
2 49 on page 5; lines 3, 9 and 27 on page 6; none on page 7,
3 none on page 8, none on page 9, line 28 on page 10; and
4 line 16 on page 11.

5 Is there any objection to withdrawing the
6 amendment of the committee?

7 The Chair hears none.

8 By unanimous consent the amendment is withdrawn.
9 Where the word "provided" appears it should read "prescribed,"
10 and wherever the word "provide" appears it should be "pre-
11 scribe".

12 Delegate Penniman, there is apparently a typograph-
13 ical error in line 19 on page 11. The word "court" should
14 be stricken, I take it?

15 DELEGATE PENNIMAN: Yes. I had made that sugges-
16 tion earlier.

17 THE PRESIDENT: I missed it.

18 The word "court" in line 19 on page 11 is stricken,
19 as well as the word "district".

20 If there is no objection, the modification will
21 be made.

1 Are there any questions of the Chairman of the
2 Committee as to any of the style changes?

3 Delegate Marvin Smith.

4 DELEGATE MARVIN SMITH: Mr. President, I note
5 that in the committee report in lines 19 and 20, on the
6 first page of the report they indicate that in section 5.08
7 they are dropping the words "in all judicial proceedings".

8 Now, my copy on page 3 does not show those words
9 dropped. It may have been their intent to drop them.

10 THE PRESIDENT: In line 24 on page 3?

11 Delegate Penniman.

12 DELEGATE PENNIMAN: It had been the intention of
13 the committee to drop them. This was a failure to do so.

14 THE PRESIDENT: It was or wasn't?

15 DELEGATE PENNIMAN: It was the intention of
16 the committee to drop them, but it failed to cross them out.

17 THE PRESIDENT: Do the words appear elsewhere
18 than in section 5.08?

19 DELEGATE PENNIMAN: I think not.

20 THE PRESIDENT: Delegate Penniman, the Chair has
21 some doubt as to whether the change is desirable, but we

1 can come to it later and consider it section by section.

2 DELEGATE PENNIMAN: It is not a matter about which
3 the committee would argue.

4 THE PRESIDENT: Delegate Mudd.

5 DELEGATE MUDD: I think, Chairman Penniman,
6 when we reviewed these with you it was agreed they would
7 not be deleted.

8 DELEGATE PENNIMAN: I am sorry. I may have made a
9 mistake. This is the reason for the contradiction.

10 THE PRESIDENT: Delegate Mudd.

11 DELEGATE MUDD: You agreed with us --

12 DELEGATE PENNIMAN: I am sorry, that should
13 remain as it is.

14 THE PRESIDENT: Then I take it that what we should
15 really do is disregard the second paragraph of the report
16 contained in lines 19 to 22.

17 DELEGATE PENNIMAN: That is correct.

18 THE PRESIDENT: Are there any questions of the
19 committee chairman?

20 Delegate Bamberger.

21 DELEGATE BAMBERGER: Section 5.25 on page 8,

1 on lines 28 and 36 the committee substituted the word "seek"
2 and "seeking" for "run for" and "running for". At least
3 to my mind that doesn't clear it up very much, and I should
4 be interested in knowing how the committee defines "seek"
5 and what distinction there is between "seek" and "run for".
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1 DELEGATE PENNIMAN: There is no distinction
2 between "seek" and "run for". It was one of those occasions
3 when the committee perhaps felt "run for" was less elegant
4 than "seek". It has no other purpose than that.

5 THE PRESIDENT: Delegate Bamberger.

6 DELEGATE BAMBERGER: Did the committee understand
7 that the word "seek" means to actually file for an elective
8 office, or that it meant something ---

9 DELEGATE PENNIMAN: "Seek" only in the sense
10 within the requirements of seeking, or running for. In
11 other words, we used it as synonymous.

12 THE PRESIDENT: Delegate Bamberger.

13 DELEGATE BAMBERGER: If that was amended to
14 state that no judge shall practice law or file for
15 elective office, would that express the intent of the
16 Committee on Style? And I suppose also the Substantive
17 Committee.

18 DELEGATE PENNIMAN: I think I would rather have
19 the Substantive Committee answer first.

20 THE PRESIDENT: Delegate Mudd.

21 DELEGATE MUDD: We concur in the use of the word

1 "seek". We do propose an amendment of substance to
2 insert "public" ahead of "elective" in lines 28 and
3 36 of section 5.25.

4 THE PRESIDENT: Delegate Mudd, I think Delegate
5 Bamberger's question would want you to express an opinion
6 as to whether in supporting the use of the word "seek" you
7 do so because you think it is a broader import than "run
8 for" or "file for". Would you comment?

9 DELEGATE MUDD: It was our intention, Delegate
10 Bamberger, to prohibit the seeking of an office, public
11 elective office, or running for office. I frankly feel
12 that the word "seek", as is indicated by Chairman
13 Penniman, is a better word than "run for", but I take it
14 to be synonymous.

15 THE PRESIDENT: Delegate Bamberger.

16 DELEGATE BAMBERGER: Delegate Mudd, if the word
17 "seek" was changed to "or be a candidate for elective office"
18 on line 27, and I suppose "being a candidate for elective
19 office" on line 36, would that accurately express the intent
20 of the Committee?

21 THE PRESIDENT: Delegate Mudd.

1 DELEGATE MUDD: Well, maybe you had better tell
2 me what you interpret to be the difference between being
3 a candidate for, and seeking. I take it they mean pretty
4 much the same thing.

5 THE PRESIDENT: Delegate Bamberger.

6 DELEGATE BAMBERGER: I think there may be people
7 who seek elective office, but never quite get to paying
8 the filing fee, and being a candidate, and I am just concerned
9 with some court interpretation or some harrassment of
10 a judge, because of what seems to me an ambiguity in the
11 words "seek" or "seeking". My suggestion is that we
12 ought to be a little more precise, and say "be a candidate
13 for" which is a state that can be defined much easier than
14 the subjective state of seeking elective office.

15 THE PRESIDENT: Is it necessarily? Can't one be
16 a candidate for an office without having formally filed for
17 the office, Delegate Bamberger?

18 DELEGATE BAMBERGER: I think that is what
19 Delegate Mudd's question is. That is why I put it to you
20 in that way.

21 DELEGATE BAMBERGER: Well, I would think "be a

1 candidate for" means that you have complied with those
2 requirements of the election laws which make you a
3 candidate.

4 THE PRESIDENT: Delegate Mudd.

5 DELEGATE MUDD: In a primary election, as well
6 as a general election?

7 DELEGATE BAMBERGER: Yes.

8 THE PRESIDENT: Delegate Mudd.

9 DELEGATE MUDD: I have no strong feeling, Mr.
10 President, personally, about the choice of the word. It
11 was the intention of our committee, as I recall the discussion
12 in committee, that we did wish to prohibit a judge from
13 becoming embroiled in the activities of seeking public
14 office, and whether it should be "run for", "seeking" or
15 "filing as a candidate for" seems to me to be pretty much a
16 choice of words.

17 THE PRESIDENT : Well, let me come back to my
18 other question, then, because I am not clear about it.

19 Does the committee intend by the use of whatever
20 term is used to prohibit, as you just put it, a judge from
21 becoming embroiled in maneuvers for elective office even

1 without formally filing a certificate of candidacy?

2 DELEGATE MUDD: That would be my interpretation
3 of the intention of the committee, Mr. President.

4 THE PRESIDENT: Very well. Are there any other
5 questions?

6 Delegate Willoner.

7 DELEGATE WILLONER: I have a question that I sup-
8 pose goes to style and substance. It is to section 5.01.

9 You have inserted the words "shall be" instead
10 of "is", and you have left the word in "exclusively", whereas
11 in the Committee of the Whole, at least in the executive
12 and legislative branch, I think in the executive branch we
13 used "shall be vested" and in the legislative branch the
14 legislative power is vested.

15 Was there much discussion about this?

16 THE PRESIDENT: Delegate Penniman.

17 DELEGATE PENNIMAN: It will be uniformly "shall
18 be vested", and the word "exclusively" is in there because
19 it had all kinds of discussion on the floor, and there was,
20 as I remember it, a specific amendment seeking to remove
21 the word "exclusively", and it was defeated by a rather

1 sizeable margin.

2 THE PRESIDENT: Delegate Willoner.

3 DELEGATE WILLONER: In section 5.03, on line 18,
4 you defined the rule-making power, and you say "as used in this
5 ~~article~~ ~~rules~~ ~~shall~~ I mean rules prescribed by the Court
6 of Appeals.

7 Is it n ot true that what you really mean there is in
8 the Constitution, as used in this Constitution, rules shall
9 mean?

10 DELEGATE PENNIMAN: No, I don't think so, because
11 it would be possible, for example, for rules to be prescribed
12 by, let's say, some portion of the executive branch for the
13 executive branch, so it is as used in this article the
14 rule is the rule of the Court of Appeals.

15 THE PRESIDENT: Delegate Willoner.

16 DELEGATE WILLONER: I know we have used the
17 word "rule" or "law" in other sections of the Constitution,
18 meaning the rule of the Court of Appeals. That was the
19 intention when it was discussed.

20 DELEGATE PENNIMAN: Our intention under those
21 circumstances would be to make clear that it is a rule of

1 the Court of Appeals. That was the intention when it
2 was discussed.

3 DELEGATE PENNIMAN: Our intention under those
4 circumstances would be to make clear that it is a rule of
5 the Court of Appeals just as we seek to make clear a law
6 whether it is by law of the General Assembly, by the General
7 Assmbly by law.

8 THE PRESIDENT: Delegate Willoner.

9 DELEGATE WILLONER: By rule it makes clear that
10 it is a rule of the Court of Appeals?

11 DELEGATE PENNIMAN: No.

12 DELEGATE WILLONER: In dealing with personal
13 rights, the preamble, it is by rule of court of law, and it
14 has been approved by your committee in that way. I was
15 wondering if you meant there it could be some other rule.

16 THE PRESIDENT: Delegate Penniman.

17 DELEGATE PENNIMAN: Could Delegate Marion answer?

18 THE PRESIDENT: Delegate Marion. I would point out
19 one reason we did that was in the legislative branch article
20 there are provisions for the rules of the legislature, and in
21 that context it does not mean a rule prescribed by the

1 Court of Appeals, but it means the internal rules of the
2 General Assembly, or each house thereof. One instance of
3 that is Section 3.17(a), which was adopted by the Committee
4 of the Whole where it says, "The General Assembly shall
5 provide by rule that each House shall keep a current daily
6 journal", and so forth.

7 THE PRESIDENT: Delegate Willoner.

8 DELEGATE WILLONER: I had two questions that
9 I would like to ask Chairman Mudd.

10 THE PRESIDENT: You may.

11 DELEGATE WILLONER: In using the language in
12 section 5.24 that each judge shall be compensated solely
13 by the state for his judicial service and permitting the
14 Committee on Style to strike out the language "or receive
15 any remuneration for his judicial service except as
16 provided herein" in section 5.25, you did not mean to
17 overrule the case of Bradford v. Jones, wherein it was
18 provided that the Article 33 of the present constitution
19 prohibited fees and perquisites in that a judge could not
20 receive special compensation or gratuities for particular
21 services, is that correct?

1 THE PRESIDENT: Delegate Mudd.

2 DELEGATE MUDD: The first part of your question
3 was directed to which section, Delegate Willoner?

4 THE PRESIDENT: Delegate Willoner.

5 DELEGATE WILLONER: The whole question goes to
6 section 5.24, that each judge shall be compensated solely
7 by the State. The Committee on Style struck out the language
8 in section 5.25 that a judge can't receive any remuneration
9 for his judicial services except as provided herein.

10 The intent of that language is to carry over the
11 prohibition that appears in article 3.33 of the present
12 declaration of rights; is that not true?

13 DELEGATE MUDD: I don't recall that being
14 specifically discussed in committee, but I think it was
15 clear from our discussion that this was to be the sole
16 compensation of judges; yes.

17 THE PRESIDENT: Delegate Willoner: And a judge
18 would not be entitled to receive any compensation or
19 gratuities for any particular service rendered for a
20 citizen, a judicial service of some kind.

21 THE PRESIDENT: Delegate Mudd.

1 DELEGATE MUDD: Yes, that is my interpretation.

2 THE PRESIDENT: Delegate Willoner.

3 DELEGATE WILLONER: In section 5.01, the word
4 "exclusively" is not meant to prohibit quasi-judicial --
5 tied in with the "shall be", and the "is vested
6 exclusively," as I remember some of the colloquy this
7 meant the judicial powers would not rest in the courts, "shall
8 be" refers to the future, is not to mean that the quasi-
9 judicial functions can't be handled by quasi-judicial
10 bodies, or is it not to get into the problems that were
11 raised with the separation of powers discussion?

12 THE PRESIDENT: Delegate Mudd.

13 DELEGATE MUDD: It was not intended to prohibit
14 the quasi-judicial functions of administrative agencies.

15 THE PRESIDENT: Delegate Bennett, do you have
16 a question?

17 DELEGATE BENNETT: Yes, Mr. Chairman.

18 If it would be in order, I would like the
19 Chairman to discuss 5.29 regarding removal by the Court of
20 Appeals.

21 THE PRESIDENT: Referring to Section 5.29, the

1 Court of Appeals is authorized to remove a judge either for
2 misconduct or disability. That is correct, isn't it?

3 DELEGATE PENNIMAN: No. Originally this had
4 been true. We separated these so one would be retirement
5 for disability and one would be removal. I mentioned that
6 as I went by. It is the same provision, it is simply that
7 we separated these out so there would be no stigma attached
8 to the retirement for disability by putting them under the
9 same general heading.

10 THE PRESIDENT: Delegate Bennett.

11 DELEGATE BENNETT: Turning to Section 5.30, a
12 judge removed for disability can be granted retirement
13 privileges.

14 DELEGATE PENNIMAN: That is right. One who is
15 retired because of disability, who has been asked to retire
16 or forced to retire would receive the same retirement pay as
17 I read that as any other judge retiring at the same time
18 under the same circumstances.

19 THE PRESIDENT: Delegate Bennett.

20 DELEGATE BENNETT: Suppose he is removed for
21 misconduct.

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1 MR. PENNIMAN: Then he comes under the removal
2 heading, and under the removal heading it is then a question
3 of what is stated, a judge removed under this section, that
4 is under section 5.29, and his surviving spouse shall have
5 the rights and privileges accruing from his judicial service
6 only to the extent prescribed by the order of removal. The
7 distinction is to get it between those who are removed, and
8 there they are limited by the court action, whereas for
9 retirement they would get the full retirement.

10 THE PRESIDENT: Delegate Bennett.

11 DELEGATE BENNETT: Could a judge who had been
12 removed for misconduct under any circumstances receive re-
13 tirement pay?

14 THE PRESIDENT: Delegate Bennett, I think that is
15 more a question of substance which ought to be directed to
16 Delegate Mudd.

17 Delegate Mudd, did you hear the question?

18 DELEGATE MUDD: I think so, Mr. President, and the
19 answer is yes, he could or could not as the Court of Appeals
20 dealt with it.

21 THE PRESIDENT: Delegate Bennett.

1 DELEGATE BENNETT: He could or could not get
2 retirement?

3 THE PRESIDENT: Delegate Mudd.

4 DELEGATE MUDD: The answer is yes.

5 THE PRESIDENT: Do you have a further question,
6 Delegate Bennett? Any other questions?

7 Delegate Johnson.

8 DELEGATE JOHNSON: Chairman Penniman, with respect
9 to Section 5.14, Delegate Jett and I have in preparation a
10 style amendment to that section, but this might be an
11 appropriate time to ask you a question in clarification.

12 Would we be correct in assuming that in order to
13 be eligible for nomination and an appointment as a judge
14 that an individual or person shall have been a citizen of
15 the state for five years, for at least five years immediately
16 preceding his nomination and shall have been authorized to
17 practice law in the state for at least five years immediately
18 preceding his nomination?

19 DELEGATE PENNIMAN: That is correct.

20 THE PRESIDENT: Delegate Johnson.

21 DELEGATE JOHNSON: Mr. President, I had one other
question that is partially style and partially goes to

4
1 substance. I am wondering if I could ask Chairman Mudd the
2 question, and ask Chairman Penniman whether or not he
3 concurs?

4 THE PRESIDENT: All right.

5 DELEGATE MUDD: Yes, Mr. President.

6 DELEGATE JOHNSON: Chairman Mudd, despite the fact
7 that Section 5.03 sets forth certain concurrent power with
8 respect to the Court of Appeals and the legislature, that is
9 certain concurrence as to the rule-making power, and despite
10 the fact that this section also provides that wherever the
11 word "by rule" appears in Article 5, that it is exclusive
12 rule-making power in the court, isn't it also true that
13 wherever the term "by law" is used, that is "provided by
14 law" in Article 5, that that is exclusive power in the
15 legislature and it is not concurrent?

16 THE PRESIDENT: Delegate Mudd.

17 DELEGATE MUDD: Yes, provided by law in my
18 interpretation would be provided by law exclusively by the
19 General Assembly, if that is your question.

20 DELEGATE PENNIMAN: That is my understanding of it.

21 THE PRESIDENT: Are there any other questions?

Delegate Henderson.

1 DELEGATE HENDERSON: I don't concur in that. If
2 you are in the three fields, it is not exclusive with the
3 Legislature because it can be overruled by the Court of
4 Appeals. The latest one on the books is the one that
5 controls.

6 THE PRESIDENT: Delegate Johnson.

7 DELEGATE JOHNSON: I don't know whether or not
8 Delegate Henderson fully understood my question.

9 THE PRESIDENT: So there won't be any doubt, would
10 you restate the question?

11 DELEGATE JOHNSON: For Delegate Henderson, I re-
12 peat to Delegate Mudd, what my question meant to imply was
13 wherever we used the term in Article 5, wherever the term
14 appears -- for instance, let's take an example, Section 5.06,
15 dealing with jurisdiction, that there shall be intermediate
16 appellate court shall have the jurisdiction provided by law.
17 Wherever a term like that is used, and in this particular
18 section "provided by law" means that the legislature has the
19 exclusive power in that particular area.

20 THE PRESIDENT: Delegate Johnson, I wonder if I
21 could clarify the question by adding to it "except with
respect to the matters mentioned in Section 5.03." Does that

1 get at your point?

2 DELEGATE JOHNSON: Not exactly, Mr. President,
3 because we deleted -- that is the Committee on Style deleted
4 reference, for instance in Section 5.09 they deleted the
5 term "as prescribed by rule or by law" and that raises some
6 question in my mind whether or not the composition of the
7 Superior Court fits into the categories mentioned with
8 absolutely no question in mind. In other words, it would
9 seem to me that we would have to define what is meant by
10 practice and procedure, or admission of persons to practice
11 law, or governing the administration of the courts. It seems
12 to me that that particular area is going to raise some
13 questions later on.

14 THE PRESIDENT: I didn't clarify the question,
15 obviously, and I am not at all sure that a categorical yes or
16 no answer can be given to your question without that
17 clarification, but let's try it again.

18 Delegate Mudd, did you understand the question, and
19 Delegate Henderson?

20 DELEGATE MUDD: My understanding of the question,
21 Mr. President, was as you interpreted it, that "provided by

1 law" except as used in 5.03, meant by the General
2 Assembly.

3 THE PRESIDENT: Delegate Johnson.

4 DELEGATE JOHNSON: I want to repeat my original
5 question.

6 Would I be correct in assuming that wherever we
7 use -- in any section in Article 5, wherever we use the
8 term "provided by law," wherever we used that term only that
9 that means that the legislature has exclusive power in that
10 particular area.

11 THE PRESIDENT: But you do not mean where that
12 term is used in Section 5.03, do you?

13 DELEGATE JOHNSON: That is correct, I don't mean
14 in that section.

15 THE PRESIDENT: In other words, what you are saying
16 is wherever the term "prescribed by law" is used in article
17 5, other than in Section 5.03, does it mean prescribed
18 exclusively by the General Assembly by law, is that your
19 question?

20 DELEGATE JOHNSON: That is my question.

21 THE PRESIDENT: Delegate Mudd.

1 DELEGATE MUDD: Yes, and with that understanding,
2 that is my interpretation, it means exclusively by the
3 General Assembly. I am sorry if Judge Henderson disagrees.

4 THE PRESIDENT: Delegate Henderson, did you have
5 any other comment?

6 DELEGATE HENDERSON: No, I just wanted to make
7 sure that in this particular field, where there is a shared
8 power, I don't know whether there are any other references
9 in the article. I just wanted to make clear there is this
10 shared power in this particular field which are named in that
11 section.

12 THE PRESIDENT: Very well. Is there any further
13 question, Delegate Johnson?

14 Delegate Harkness.

15 DELEGATE HARKNESS: Mr. Chairman, I would like to
16 ask Chairman Mudd a question if I may.

17 DELEGATE HARKNESS: Chairman Mudd, in regard to
18 Section 5.25, Restriction of Non-Judicial Activities, under
19 the language of that section would there be anything to
20 prohibit a judge from holding a position of judge, president
21 of a bank, president of a building and loan, or directorship

1 on any corporation that may be involved?

2 THE PRESIDENT: Delegate Mudd.

3 DELEGATE MUDD: I previously indicated, Delegate
4 Harkness, that we proposed to offer an amendment to insert
5 "public" between "seek" and "elective" in lines 28 and 36,
6 and I can't even with that addition point to anything in the
7 section on close reading that would prohibit the activity
8 such as you indicate, but I would say that they certainly
9 seem to me to be incompatible with holding a judgeship.

10 THE PRESIDENT: Delegate Harkness.

11 DELEGATE HARKNESS: Well, even with the amendment
12 you propose, I suggest, and I think you have already
13 assented, there would be nothing constitutionally to prevent
14 a judge from being judge and being president of the local
15 bank.

16 THE PRESIDENT: Delegate Mudd.

17 DELEGATE MUDD: I can't read that prohibition into
18 Section 5.25.

19 THE PRESIDENT: Delegate Mudd, the Chair seems to
20 recall, I am not sure when this was discussed, at the time of
21 the presentation of your report you indicated that the

1 Committee was relying upon the canons of judicial ethics for
2 restrictions upon the non-judicial activities of a judge.
3 Is this correct?

4 DELEGATE MUDD: I am quite sure you are correct,
5 Mr. President, and I do remember some discussion. Perhaps
6 that was the explanation, and I think that is a better
7 answer to Delegate Harkness's question than Section 5.25.

8 THE PRESIDENT: Are there any further questions of
9 the Committee Chairman?

10 Delegate Grant.

11 DELEGATE GRANT: Mr. President, in the Committee
12 of the Whole there was some discussion whether or not the
13 retirement of judges was intended to be restricted by the
14 words "and his surviving spouse" which is used in line 20
15 on page 8, and used again in line 4 on page 10.

16 As I recall the discussion at that time, in view
17 of what is said on line 27 of page 10, retirement provided by
18 law, that the retirement could be extended to include
19 dependent and not necessarily limited to surviving spouse
20 except in a case of a removal where it was intended to have
21 a punitive effect, and if anything was to be granted it was

1 only to be to a surviving spouse.

2 I would like to ascertain that it is not the
3 intention of the language on page 8 to carry that restriction
4 which is on line 4, page 10, into page 8?

5 THE PRESIDENT: Do you understand the question,
6 Delegate Penniman?

7 DELEGATE PENNIMAN: It is not intended to carry
8 that into 8. I think we are using it almost precisely as
9 the words were used. It is simply that we have moved them
10 down in 5.24 from the position which they had held in order
11 to put them in chronological order.

12 THE PRESIDENT: Any further question, Delegate
13 Grant?

14 DELEGATE GRANT: No. If it is not intended that
15 they may provide broader retirement benefits than in the
16 Constitution, that is all right.

17 THE PRESIDENT: Are there any questions of the
18 Committee Chairman? The Chair hears none.

19 Delegate Penniman, you may return to your seat.

20 In keeping with the procedure we have been follow-
21 ing, the first matter for consideration are the

1 recommendations of the Committee on Style. Amendments open
2 now are amendments as to style germane to the amendments
3 as to style proposed by the Committee.

4 Are there any such amendments? The Chair has not
5 been apprised of any. The Chair hears none.

6 The Chair recognizes Delegate Fox on a matter of
7 personal privilege.

8 DELEGATE FOX: Mr. Chairman, and ladies and
9 gentlemen of the committee, I just wanted you to join with me
10 in welcoming to the gallery the mother of our reading clerk,
11 James Quillen of Berlin, Maryland, who was a student of
12 Salisbury State Teachers College. In the gallery is his
13 mother, Mrs. Gladys Quillen.

14 (Applause.)

15 THE PRESIDENT: The Chair has no amendment with
16 respect to the style amendments proposed by the Committee on
17 Style. Are there any? The Chair hears none. The question
18 therefore arises on the adoption of the amendments proposed
19 by the Committee on Style, Drafting and Arrangement with
20 respect to style changes in Committee Recommendation JB-1.

21 Delegate Johnson.

1 DELEGATE JOHNSON: Mr. President, there is one
2 style amendment that Delegate Jett and I have prepared to
3 Section 5.14, lettered "J."

4 THE PRESIDENT: Delegate Johnson, I don't believe
5 the amendment is one of style. I will recognize you when
6 we condider the amendment. I think it is one of substance.
7 It is not germane to any of the amendments proposed by the
8 Committee. I will recognize you when we come to these
9 amendments.

10 Delegate Johnson.

11 DELEGATE JOHNSON: Mr. President, I specifically
12 ask Chairman Penniman whether or not that was the intent of
13 the Committee on Style, and he answered in the affirmative.

14 THE PRESIDENT: Oh, maybe I misunderstood you,
15 then. You mean that he stated, or I misunderstood him -- he
16 stated that it was the intent of the committee that the
17 sentence beginning in line 41, "A judge shall have been a
18 citizen of the state and shall have been authorized to
19 practice law in the state for at least five years"; the
20 "at least five years" was intended to apply to both.

21 DELEGATE JOHNSON: That is correct.

1 THE PRESIDENT: Is that correct, Delegate
2 Penniman?

3 DELEGATE PENNIMAN: Yes, that was my statement.

4 THE PRESIDENT: Very well, the amendment is in
5 order.

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1 Will the pages please distribute Amendment J?

2 Delegate Johnson, I think even though your amend-
3 ment is one of style, it does not affect, as I understand
4 it, any of the changes made by the Committee on Style.
5 I don't think it is germane to their amendment, and I
6 therefore don't think it should be offered at this time.
7 I will recognize you to offer the amendment as soon as
8 we come to this section.

9 The only question now is the approval of the
10 changes made by the Committee on Style, and any amendments
11 germane to those changes.

12 Are there any amendments which would in effect
13 be secondary amendments germane to the amendments
14 proposed by the Committee on Style with respect to Commit-
15 tee Recommendation JB-1?

16 The Chair hears none.

17 The question arises, therefore, on the adoption
18 of the amendments to Committee Recommendation JB-1, proposed
19 by the Committee on Style in its report S&D-8.

20 Are you ready for the question?

21 The clerk will ring the quorum bell.

1 The question arises on the adoption of the amend-
2 ments proposed by the Committee on Style to Committee
3 Recommendation JB-1. This will not include the
4 amendments withdrawn by unanimous consent, so that the word
5 "prescribe" or "prescribed" is not changed -- it still
6 remains "prescribe" or "prescribed".

7 A vote Aye is a vote in favor of the amendment
8 proposed by the Committee on Style. A vote No is a vote
9 against.

10 Cast your votes.

11 (Whereupon, a roll call vote was taken.)

12 THE PRESIDENT: Has every delegate voted? Does
13 any delegate desire to change his vote?

14 The clerk will record the vote.

15 There being 115 votes in the affirmative and
16 none in the negative, the amendments of the Committee
17 on Style proposed for Committee Recommendation JB-1 are
18 adopted.

19 Committee Recommendation JB-1 is now open
20 to amendment section by section.

21 Are there any amendments with respect to 5.01?

1 Delegate Kirkland, do you desire to offer your
2 Amendment F?

3 DELEGATE KIRKLAND: Yes, sir, I do.

4 THE PRESIDENT: The pages will distribute Amend-
5 ment F. It will be Amendment No. 1.

6 The clerk will read the amendment.

7 MR. QUILLEN: Amendment No. 1 to Committee
8 Recommendation JB-1 as amended by Report No. S&D-8, by
9 Delegate Kirkland:

10 On page 1, Section 5.01, Judicial Power, strike
11 out all of lines 7 through 11, inclusive, and insert in
12 lieu thereof the following:

13 "The judicial power of the State shall be vested
14 in one Court of Appeals, Circuit Courts, and in such in-
15 ferior courts as the General Assembly may from time to
16 time provide by law. The several courts shall have ori-
17 ginal and appellate jurisdiction as provided by law."

18 THE PRESIDENT: The amendment has been sub-
19 mitted by Delegate Kirkland. Is there a second?

20 (Whereupon, the amendment was seconded.)

21 THE PRESIDENT: The Chair recognizes Delegate

1 Kirkland.

2 DELEGATE KIRKLAND: Mr. Chairman, ladies and
3 gentlemen:

4 I guess with some reluctance I offer this amend-
5 ment, but I want to see just how consistent this group
6 will be.

7 First of all, I would like for you to know I am
8 not against court reform. Certainly there is evidence we
9 need some court reform here in the State of Maryland. How-
10 ever, I feel that this article has been a real concern of
11 mine ever since it passed the Committee of the Whole, and
12 probably for these reasons:

13 First of all, I have not received on paper, at
14 least, a cost analysis. I think, personally I feel that
15 I owe a debt to the people back home who sent me here
16 at least to have some idea as to what I am voting for be-
17 fore I vote, so therefore, without a cost analysis, this
18 thing broken down by county and what it would cost the State,
19 I kind of refuse to vote for something that I don't know
20 what I am voting for.

21 Secondly, I think that there is entirely too

1 much detail in this particular article. Much of the
2 detail is legislative or statutory by nature, and I would
3 like to ask you this question:

4 Are we serious about keeping the Constitution
5 brief, broad and basic? I think some people here have
6 made an attempt to do this, and I would like to call on
7 those very same people to support this amendment, if they
8 are really serious in keeping this Constitution brief,
9 broad and basic.

10 There is another reason why I feel that this
11 should not be an article for the Constitution, and that is
12 that you are freezing in something which is experimental
13 by nature. Certainly there is no State that has this state-
14 wide system as planned by this Constitutional Convention.
15 I can't see freezing something in that is of an experimen-
16 tal nature.

17 Then there is another reason that I could give
18 you, and many of you I have talked to have expressed your
19 concern. This is clear in the State legislature. For
20 a considerable number of years they have refused to adopt
21 it statewide.

1 And in the Bar Association, as I understand
2 from my friends in the Bar Association, this has not been
3 an eitirely popular plan within their own Bar Association;
4 so therefore I submit to you that this is entirely too much
5 detail for our Constitution which we want to modernize.
6 Therefore, I urge and ask your support of this amendment.

7 THE PRESIDENT: Delegate Mudd.

8 DELEGATE MUDD: Mr. President, may I ask the
9 sponsor a question?

10 THE PRESIDENT: Delegate Kirkland, will you yield
11 to a question?

12 DELEGATE KIRKLAND: Yes, sir.

13 I am not a lawyer, but I will try to answer
14 it, sir.

15 THE PRESIDENT: Delegate Mudd.

16 DELEGATE MUDD: Is it correct that you propose
17 this amendment in lieu of section 5.01?

18 DELEGATE KIRKLAND: Yes, sir, it is.

19 THE PRESIDENT: Delegate Mudd.

20 DELEGATE MUDD: Are there companion amendments?

21 DELEGATE KIRKLAND: I have another amendment

1 which will follow which will eliminate the rest of the
2 article.

3 THE PRESIDENT: Delegate Mudd.

4 DELEGATE MUDD: Well, my response to that, Mr.
5 President, would be that perhaps this amendment is not
6 entirely in order, if that is the intent of the proponent.
7 His amendment would propose to delete the entire section,
8 I take it.

9 Dealing with the matters he discussed in pro-
10 posing the amendment, I do call attention to the fact
11 that he is eliminating the Intermediate Court of Appeals,
12 which we have had the benefit of for some time, previously
13 adopted for the State of Maryland; and he is also leaving
14 the door open for the General Assembly to set up superior
15 courts, a word we chose not to use in our committee because
16 we do not recognize that any courts are within that cate-
17 gory; and of course, I must oppose this amendment consis-
18 tent with the recommendation of the majority of the
19 committee.

20 As I first understood the proponent of the
21 amendment, his difficulty was with respect to the

1 courts of the judiciary as proposed by our Article V.
2 We had some questions at the time this was discussed on the
3 floor, not from Delegate Kirkland but from another source,
4 and we have attempted to furnish all the information.

5 I can only say in proposing this amendment that
6 it obviously has not been thought out consistent with
7 the other recommendation of our committee. If we adopt
8 this amendment, it would be meaningless and of no conse-
9 quence; and of course, it would be inconsistent and com-
10 pletely incompatible with the other provisions of the
11 section.

12 THE PRESIDENT: Just a moment.

13 DELEGATE MUDD: I have been reminded -- per-
14 haps I was cut off intentionally, because this amendment
15 does not need any further opposition. So I therefore urge
16 your votes against it.

17 THE PRESIDENT: Is there any further discussion?

18 Are you ready for the question?

19 The clerk will ring the quorum bell.

20 The question arises on the adoption of Amendment
21 No. 1. A vote Aye is a vote in favor -- for what purpose

1 does Delegate Storm rise?

2 DELEGATE STORM: Would I be able to ask the
3 sponsor of this amendment another question, if he would
4 take the floor?

5 THE PRESIDENT: Delegate Kirkland, will you take
6 the floor to yield to a question?

7 DELEGATE KIRKLAND: I will try to answer.

8 THE PRESIDENT: Delegate Storm.

9 DELEGATE STORM: Delegate Kirkland, was it
10 your intention to eliminate the Intermediate Court of
11 Appeals?

12 THE PRESIDENT: Delegate Kirkland.

13 DELEGATE KIRKLAND: No, it was not, Delegate
14 Storm.

15 I would suggest that this be amended, and, of
16 course, as I said, not being an attorney or lawyer within
17 the State this was a little difficult for me.

18 I would like to let Delegate Mudd know that
19 I had given this considerable thought; in fact, it has
20 been on my desk for a long time. I would like to amend
21 this to meet the needs of the present situation, the present

1 court structure within the State.

2 THE PRESIDENT: What amendment do you suggest,
3 Delegate Kirkland.

4 DELEGATE KIRKLAND: I would put in the Inter-
5 mediate Courts.

6 THE PRESIDENT: Where?

7 DELEGATE KIRKLAND: Between the Appeals and
8 Circuit.

9 THE PRESIDENT: What words do you want to add?

10 DELEGATE KIRKLAND: "Intermediate Appellate
11 Court."

12 THE PRESIDENT: You want one intermediate
13 appellate court, or just the words "Intermediate Appellate
14 Court"?

15 DELEGATE KIRKLAND: Well, whatever we have now,
16 sir.

17 THE PRESIDENT: That is true.

18 Is there any objection to a modification of
19 the amendment by inserting in line 7, after the comma
20 after the word "Appeals" the words "one Intermediate Ap-
21 pellate Court"?

1 The Chair hears none. The amendment will be
2 considered as so modified.

3 Are you ready for the question?

4 The clerk will ring the quorum bell, please.

5 The question arises on the adoption of
6 Amendment No. 1 as modified. A vote Aye is a vote in
7 favor of the amendment. A vote No is a vote against.

8 Cast your votes.

9 (Whereupon, a roll call vote was taken.)

10 THE PRESIDENT: Has every delegate voted?

11 Delegate Clark?

12 DELEGATE CLARK: Record me No, please.

13 THE PRESIDENT: Delegate Clark votes No.

14 Has every delegate voted? Does any delegate
15 desire to change his vote?

16 The clerk will record the vote.

17 There being 23 votes in the affirmative and 86
18 in the negative, the motion is lost. The amendment is
19 rejected.

20 The next amendment which the Chair has,
21 sponsored by 15 or more delegates, is Amendment A.

1 Delegate Mudd, do you desire to offer Amend-
2 ment A?

3 DELEGATE MUDD: Yes, Mr. President.

4 THE PRESIDENT: The pages will please distribute
5 Amendment A; "A" for "able".

6 This will be Amendment No. 2.

7 The clerk will read the amendment.

8 MR. QUILLEN: Amendment No. 2 as amended by
9 Report No. S&D-8 to Committee Recommendation JB-1, by
10 Delegates Mudd, Hickman, Kahl, Henderson, Harkness, J. H.
11 Smith, Hargrove, Dulany, Bradshaw, Cicone, Rosenstock, M. H.
12 Smith, Schneider, Cleveland, and Marion:

13 On page 5, Section 5.16, Appellate Courts Nomi-
14 nating Commission, in line 39 strike out the
15 period and insert in lieu thereof the following:

16 ", but the General Assembly shall provide
17 by law for shorter terms for four of the lay and four of
18 the lawyer members first appointed or elected, in order
19 to establish staggered terms of office. A vacancy on the
20 Commission shall be filled for the remainder of the term."

21 THE PRESIDENT: The amendment is submitted

1 by Delegate Mudd and seconded by the co-sponsors.

2 The Chair recognizes Delegate Mudd.

3 DELEGATE MUDD: Mr. President, ladies and
4 gentlemen of the Convention:

5 You may recall that at the time this article
6 was debated before the Committee of the Whole I was
7 questioned as to the intention of the committee with respect
8 to the terms of the lawyer members of the Nominating Com-
9 mission, and I believe I said that it was our intention that
10 in order to avoid any possibility of packing the Nominating
11 Commission, should any governor be so minded, that it was
12 our hope that these terms could be staggered.

13 Thereafter we felt that that might be accomplished
14 by transitional provisions. We found that that would
15 be impossible, and consistent with our representations
16 at the time this matter was debated before the Committee
17 of the Whole, we now propose to add this amendment to
18 section 5.16, which does nothing more than give the General
19 Assembly the authority to provide by law for shorter
20 terms for these members initially in order that the terms
21 may be staggered.

1 The amendment further provides that a vacancy
2 on the Commission shall be filled for the remainder of
3 the term; otherwise the staggered terms could not be main-
4 tained.

5 Therefore, we ask your support of this amendment
6 in order to carry out the representations we made at
7 the time our committee recommendation was presented to the
8 Committee of the Whole, and your support of this amendment
9 will be appreciated.

10 THE PRESIDENT: Is there any other discussion?
11 Delegate Adkins.

12 DELEGATE ADKINS: May I ask the Chairman a
13 question?

14 THE PRESIDENT: Yes, Delegate Adkins.

15 DELEGATE ADKINS: Is this not something that
16 could be handled in transitional scheduling?

17 THE PRESIDENT: Delegate Mudd.

18 DELEGATE MUDD: We first thought so, Delegate
19 Adkins, and prepared provisions accordingly. We were
20 afterwards advised it could not be done.

21 THE PRESIDENT: The Chair can amplify that a

1 little.

2 The group working on the transitional pro-
3 visions tried to work this out, and you could provide for
4 initial staggered terms; but without a substantive
5 change such as this at some point the staggered terms would
6 disappear.

7 Delegate Johnson.

8 DELEGATE JOHNSON: Mr. President, I would like
9 to offer an amendment to this amendment, if I may, if
10 it is in order.

11 THE PRESIDENT: I don't know. State what it is.
12 Is it printed?

13 DELEGATE JOHNSON: No, it is not. I have just
14 seen the amendment for the first time.

15 THE PRESIDENT: Will you state the nature of
16 the amendment?

17 DELEGATE JOHNSON: I would like to amend this
18 amendment so that it would read, instead of its present
19 language, as follows: ", but the General Assembly may
20 provide by law for shorter terms in order to establish
21 staggered terms of office."

1 The reason, if I may --

2 THE PRESIDENT: Do you mean to leave out the
3 last sentence, or is what you suggested just a substitute
4 for the first sentence?

5 DELEGATE JOHNSON: I have no quarrel with the
6 last sentence. As far as I am concerned, the last
7 sentence could stay.

8 THE PRESIDENT: Delegate Mudd, would you accept
9 the change?

10 DELEGATE MUDD: If I followed it, Mr. President,
11 he proposes to change "shall" to "may".

12 THE PRESIDENT: That is one of the changes.

13 DELEGATE MUDD: I feel that we would have to
14 oppose that, because it was our representation, I
15 believe at the time we debated this matter in the Committee
16 of the Whole, that these staggered terms would be provided
17 for; and it was our intention to allow -- not allow, but
18 to provide for staggered terms.

19 Therefore, unless the General Assembly is re-
20 quired to provide for them, it seems to me we would
21 not follow through with our commitment and representation

1 to the Committee of the Whole.

2 THE PRESIDENT: Is there any objection to con-
3 sidering the proposed amendment, notwithstanding that it
4 hasn't been printed?

5 The proposed amendment would amend the
6 amendment by striking the word "shall" in line 6 and sub-
7 stituting the word "may"; and by deleting in lines 7 and 8
8 the words "for four of the lay and four of the lawyer
9 members first appointed who are elected".

10 Is that your amendment, Delegate Johnson?

11 DELEGATE JOHNSON: That is correct, Mr. Presi-
12 dent.

13 THE PRESIDENT: Delegate Mudd.

14 DELEGATE MUDD: I am reluctant to do so, Mr.
15 President, but I would have to object.

16 THE PRESIDENT: I suggest to you, Delegate Mudd,
17 that an objection would simply delay consideration because
18 Delegate Johnson has not had the opportunity to consider
19 offering his amendment before now because he hadn't seen
20 your amendment. I think we might make quicker time
21 with the amendment, understandably, not to object to

1 object to the fact it is not printed, but consider it when
2 offered.

3 DELEGATE MUDD: I will be happy to withdraw
4 the objection and will vote against the amendment.

5 THE PRESIDENT: For what purpose does Delegate
6 Penniman rise?

7 DELEGATE PENNIMAN: I would point out it says
8 "shall provide", and I would assume Delegate Mudd and
9 Delegate Johnson would accept the words "shall prescribe
10 by law" in line 6.

11 THE PRESIDENT: In line 6, would you accept the
12 amendment to insert the word "prescribe"?

13 DELEGATE JOHNSON: Yes, Mr. President.

14 THE PRESIDENT: Is there any objection?

15 If not, the amendment will be modified by
16 striking "provide" and inserting "prescribe" in line 6.

17 Delegate Bamberger.

18 DELEGATE BAMBERGER: Would Delegate Mudd yield
19 for a question?

20 THE PRESIDENT: Just a second.

21 Do you have any objection to considering the

1 amendment? Let me get the amendment before you.

2 Is there any objection to considering the amend-
3 ment proposed by Delegate Johnson, notwithstanding the
4 fact that it is not printed?

5 The Chair hears none.

6 This will be Amendment 2A. It would substitute
7 the word "may" for the word "shall" in line 6, and would
8 eliminate from lines 7, 8 and 9 the words "for four of the
9 lay and four of the lawyer members first appointed or
10 elected,".

11 The amendment is proposed by Delegate Johnson.
12 Is there a second?

13 DELEGATE BARRICK: Second.

14 THE PRESIDENT: Delegate Barrick seconded.

15 The Chair recognizes Delegate Johnson.

16 DELEGATE JOHNSON: Mr. President and ladies
17 and gentlemen of the Convention:

18 I should like to point out at the outset that
19 my quarrel isn't really with the term "shall", not in the
20 least, and I would hope that you would consider my amend-
21 ment to this amendment in that light.

1 I have no objection to the word "shall" except
2 for the fact that I don't think it would be consistent
3 with good constitutional writing to put it in this par-
4 ticular type of amendment.

5 May I call your attention to the fact that we are
6 dealing with section 5.16, which deals with the Appellate
7 Court Nominating Commission, only?

8 Now, may I direct your attention to the section
9 immediately after that, section 5.17, wherein we give the
10 legislature the power, and rightfully so, I believe, to
11 establish the terms of members of the Trial Court Nominat-
12 ing Commission?

13 All I am suggesting is, why shouldn't we be con-
14 sistent in this particular area. I am in favor of staggered
15 terms for nominating commissions, but I am opposed to
16 putting this particular type language, that is the language
17 that was originally suggested by the signatories to this
18 amendment, in our Constitution, when it is only going
19 to be operative the first time the nominationg commissions
20 are established.

21 I think it is silly to do so. I believe that if

1 we give this directive to the legislature they will in
2 fact establish staggered terms initially, but if we put this
3 language in, it is only going to operate one time and there-
4 after it will be absolutely no use being contained in our
5 Constitution.

6 Now, if we are willing to give our legislature
7 the power to establish the terms on the nominating
8 commissions for trial courts, I don't see why we shouldn't
9 be consistent and do so on the appellate courts and adopt
10 what I consider a reasonably good constitutional drafting,
11 and not use the language as previously recommended.

12 THE PRESIDENT: Delegate Mudd.

13 DELEGATE MUDD: Mr. President, ladies and gentle-
14 men of the Convention:

15 I oppose the amendment for the reason stated
16 before. The purpose of this amendment was to carry out
17 our obligation to the Committee of the Whole in representing
18 that we would see that staggered terms were provided for,
19 and not being able to accomplish that by transitional pro-
20 visions, we now propose this amendment and use the word
21 "shall" advisedly, so that the General Assembly will be

1 obligated to carry out the intention of the Committee in
2 that respect.

3 I therefore oppose the amendment; but while I am
4 on my feet, may I ask Chairman Penniman whether, in view
5 of substituting "prescribe" for "provide", does he not
6 feel the word "for", the second word in line 7, should be
7 deleted?

8 THE PRESIDENT: Delegate Penniman.

9 DELEGATE PENNIMAN: That is quite correct. It
10 should be deleted.

11 THE PRESIDENT: Is there any objection to
12 deleting the word "for" in line 7?

13 The Chair hears none.

14 The amendment is modified by deleting the word
15 "for" in line 7.

16 Delegate Bamberger, did you have a question
17 of Delegate Mudd with respect to 2A?

18 DELEGATE BAMBERGER: No.

19 THE PRESIDENT: Is there further discussion?
20 Are you ready for the question?

21 The clerk will ring the quorum bell.

1 The modification in line 7 was to strike the word
2 "for" before the word "shorter" -- the first word "for"
3 in line 7.

4 The question arises on the adoption of Amendment
5 2-A. After you have voted on this, the Chair will submit
6 for your consideration the adoption of Amendment 2, either
7 as amended or as not amended, depending upon the action
8 on Amendment 2A.

9 The question now arises on the adoption of Amend-
10 ment 2A. A vote Aye is a vote in favor of the amendment
11 of the amendment -- this is not a vote on the amendment
12 itself -- a vote on the amendment of the amendment. A
13 vote Aye is a vote in favor of Amendment 2A, the amendment
14 of the amendment. A vote No is a vote against.

15 Cast your votes.

16 (Whereupon, a roll call vote was taken.)

17 THE PRESIDENT: Has every delegate voted? Does
18 any delegate desire to change his vote?

19 Delegate Kosakowski?

20 DELEGATE KOSAKOWSKI: My button isn't working.
21 I would like to vote No.

1 THE PRESIDENT: Delegate James Clark.

2 DELEGATE CLARK: I would like to vote No, Mr.
3 President.

4 THE PRESIDENT: Delegate James Clark votes No.

5 Has every other delegate voted? Does any
6 delegate desire to change his vote?

7 The clerk will record the vote.

8 There being 39 votes in the affirmative and 67
9 in the negative, the motion is lost. Amendment 2A is re-
10 jected.

11 The question now arises on the adoption of Amend-
12 ment 2.

13 Is there further discussion?

14 Delegate Bamberger.

15 DELEGATE BAMBERGER: Will Delegate Mudd yield
16 for a question?

17 THE PRESIDENT: Let me have discussion first.

18 Delegate Macdonald, did you want to discuss
19 the amendment?

20 DELEGATE MACDONALD: I wished to ask a ques-
21 tion, sir.

1 THE PRESIDENT: Very well.

2 Delegate Mudd, will you take the floor to yield
3 to a question from Delegate Bamberger?

4 DELEGATE MUDD: Yes.

5 THE PRESIDENT: Delegate Bamberger.

6 DELEGATE BAMBERGER: I take it the second
7 sentence, "shall be filled for the remainder of the term",
8 does not mean that when the first short term expires the
9 successor to that particular position serves only for the
10 balance of the four years, but serves a full four-year
11 term, doesn't he?

12 DELEGATE MUDD: The successor, yes, would be
13 appointed for a full four-year term.

14 THE PRESIDENT: Delegate Bamberger.

15 DELEGATE BAMBERGER: I would address this
16 question to the President.

17 I don't understand your response to Delegate
18 Adkins' question as to why this could not be a part of the
19 transitory provisions, because wouldn't it be so that if
20 the first terms of some of the members are less than four
21 years and all of their successors are appointed for terms

1 of four years the staggering would continue?

2 THE PRESIDENT: Not if a vacancy occurred before
3 the expiration of the term. In the absence of a provision
4 that the vacancy would be filled by appointment for the
5 unexpired term it would be filled for four years, and this
6 would destroy the staggering.

7 DELEGATE BAMBERGER: Well, then, the only sen-
8 tence that is necessary is the second sentence, isn't it?

9 THE PRESIDENT: The second sentence would cure
10 that problem, that is true.

11 DELEGATE BAMBERGER: Couldn't the provision for
12 initial terms of less than four years be included in
13 those transitory provisions, and only effective until the
14 first commission is appointed?

15 THE PRESIDENT: My hesitation is not as to
16 whether it can or can't be, but it would be whether
17 it would be in the legislation or in the transitional pro-
18 visions.

19 At the present time, it is contemplated it
20 would be in the schedule of legislation, I think. If
21 you adopted an amendment which contained only the second

1 sentence, then I would say that the provision included
2 in the transitional provisions would probably accomplish
3 the purpose.

4 DELEGATE BAMBERGER: I am speaking of what I under-
5 stand the transitional provisions to be -- that is, pro-
6 visions of constitutional effect which expire after a lim-
7 ited time.

8 THE PRESIDENT: That is true.

9 DELEGATE BAMBERGER: Then I readdress Delegate
10 Adkins' question to Delegate Mudd, and that is, why
11 can't we in those transitional provisions provide for
12 initial terms of less than four years, and not put this
13 in the Constitution, put in the Constitution a provision
14 which wi-1 have no meaning after the first commission has
15 been appointed.

16 THE PRESIDENT: Do you mean to include in your
17 suggestion that this section would include a provision
18 similar to the second sentence of Amendment 2?

19 DELEGATE BAMBERGER: No, sir. I think if that
20 has to be stated, that one who is appointed to the
21 commission to succeed someone who has vacated an

1 unexpired term would occupy that position only for the
2 unexpired term. I think that probably has to be in the
3 Constitution.

4 I am addressing my remarks only to the words
5 of the amendment which precede the last sentence.

6 THE PRESIDENT: In other words, Delegate Mudd,
7 as I understand what Delegate Bamberger is saying,
8 it is if you changed your amnemdnet so that it included
9 only the second sentence, the sentence beginning on line
10 10, could you then accomplish the rest of the purpose of
11 the amendment by the transitional provisions?

12 DELEGATE MUDD: It is my recollection that that
13 was the conclusion of the ad hoc committee, Mr. President,
14 and that part of this might be accomplished by transi-
15 tional provisions, but that the last sentence could not be
16 appropriately included in the transitional provisions, and
17 therefore we accepted the suggestion or conclusion of the
18 ad hoc committee that the best way, and perhaps only safe
19 way to accomplish this was by amendment to section 5.16.

20 THE PRESIDENT: Are there any other questions?

21 Delegate Bamberger, the fact would remain, as

1 I mentioned to Delegate Adkins and as he just reminds me,
2 that you would still have an inconsistency between
3 the transitional provision and the language of this sec-
4 tion; and while theoretically this might be possible
5 because they are both in the Constitution, it would certainly
6 be undesirable.

7 Delegate Macdonald.

8 DELEGATE MACDONALD: Mr. President, I would
9 like to ask the Chairman of the Committee a question,
10 please.

11 THE PRESIDENT: Delegate Mudd, I will have to
12 assume you still have the floor, since nobody has inter-
13 vened, and remind you that this will be the second time
14 you have taken the floor. You will not be able to speak
15 on the amendment.

16 Do you yield to Delegate Macdonald?

17 DELEGATE MUDD: Yes, Mr. President.

18 THE PRESIDENT: Delegate Macdonald.

19 DELEGATE MACDONALD: Delegate Mudd, would you
20 please explain who the staggered terms would work?

21 I note that section 5.16 provides that you would have

1 six lay members and six lawyer members, and that the term
2 of each member would be four years.

3 In your amendment you suggest that the General
4 Assembly shall provide by law for shorter terms for four
5 of the lay members and four of the lawyer members first
6 appointed or elected.

7 Would you please explain what is contemplated
8 in regard to the staggering?

9 THE PRESIDENT: Delegate Mudd.

10 DELEGATE MUDD: What we considered, Delegate
11 Macdonald, was the possibility that of the initial six
12 lay members, two might be appointed for one year initially
13 and two for two years and two for four in each group, and
14 that their successors would then be appointed for four
15 year terms; and any vacancy by virtue of death or resig-
16 nation during the first term, the successor would be appointed
17 for the unexpired term, and in that way you would maintain
18 the staggered terms.

19 Does that answer your question?

20 THE PRESIDENT: Delegate Macdonald.

21 DELEGATE MACDONALD: Does that mean after the

1 system got working you would have two going out one year,
2 two in another year; then you would skip, and then two the
3 fourth year?

4 THE PRESIDENT: Delegate Mudd.

5 DELEGATE MUDD: Yes, that was one possibility
6 we considered the legislature might provide to accomplish
7 the staggered terms.

8 THE PRESIDENT: Delegate Macdonald.

9 DELEGATE MACDONALD: Then you do not contemplate
10 that you would have three appointed every two years?

11 THE PRESIDENT: Delegate Mudd.

12 DELEGATE MUDD: That may be a possibility, but
13 I don't think it would really accomplish staggered terms
14 for the six members.

15 THE PRESIDENT: Any further questions, Delegate
16 Macdonald?

17 DELEGATE MACDONALD: No further questions.

18 THE PRESIDENT: Delegate Marion.

19 DELEGATE MARION: Mr. Chairman, I wonder, in
20 view of the fact the Committee on Style when dealing with
21 another section relating to staggered terms has used,

1 or will suggest to the Convention in its report on that
2 section that the words "overlapping terms" be used, whether
3 or not Chairman Mudd would agree to amendment by
4 substituting the word "overlapping" for the word "staggering"
5 in line 9 of the amendment?

6 THE PRESIDENT: Delegate Mudd.

7 DELEGATE MUDD: If Chairman Penniman agrees
8 that that language is consistent with his idea, I will
9
10 so concur.

11 THE PRESIDENT: Delegate Penniman.

12 DELEGATE PENNIMAN: That would be consistent.

13 THE PRESIDENT: Then do you desire to make the
14 modification, Delegate Mudd?

15 DELEGATE MUDD: Yes. I ask unanimous consent
16 to change "staggered" to "overlapping".

17 THE PRESIDENT: Is there any objection to modi-
18 fying the amendment by changing the word "staggered" to
19 the word "overlapping" in line 9?

20 The Chair hears none.

21 The amendment will be considered as so modified.

1 Is there any further discussion?

2 Delegate Marion.

3 DELEGATE MARION: One more question, Mr. Chair-
4 man, of Chairman Mudd, if I might.

5 THE PRESIDENT: You may proceed.

6 DELEGATE MARION: The last sentence speaks
7 of filling a vacancy for the remainder of the term.
8 Is there any intent by this amendment to prescribe the manner
9 in which such a vacancy would be filled?

10 Would a lawyer member vacancy be filled by
11 special lawyer election, or is that just to be left by
12 the absence of any qualifying words to the legislature to
13 prescribe?

14 THE PRESIDENT: Delegate Mudd.

15 DELEGATE MUDD: We did not intend to particu-
16 arize or specify as to how that might be provided for.
17 In one instance it would be appointment, in the other
18 it would be an election, as I recall the other sectoin,
19 and perhaps with respect to the election of the lawyer
20 members it would have to be provided by rule.

21 THE PRESIDENT: Are there any further questions?

1 Is there any further discussion? Are you ready for the
2 question?

3 The clerk will ring the quorum bell.

4 The question arises on the adoption of Amendment
5 No. 2 as modified. A vote Aye is a vote in favor of the
6 amendment. A vote No is a vote against.

7 Cast your vote.

8 (Whereupon, a roll call vote was taken.)

9 THE PRESIDENT: Has every delegate voted? Does
10 any delegate desire to change his vote?

11 The clerk will record the vote.

12 Delegate James Clark, will you announce your
13 vote?

14 DELEGATE CLARK: "No".

15 THE PRESIDENT: There being 94 votes in the
16 affirmative and 21 in the negative, the motion is carried.
17 The amendment is adopted.

18 The next amendment, sponsored by 15 delegates,
19 is Amendment B.

20 Delegate Mudd, do you desire to offer Amendment
21 B?

1 DELEGATE MUDD: Yes, Mr. President.

2 THE PRESIDENT: The pages will please distribute
3 Amendment B -- "B" for "boy".

4 This will be Amendment No. 3. The clerk will
5 read the amendment.

6 MR. QUILLEN: Amendment No. 3 to Committee
7 Recommendation JB-1 as amended by Report No. S&D-8, by
8 Delegates Mudd, Hickman, Kahl, Henderson, Harkness, J.H.
9 Smith, Hargrove, Dulany, Bradshaw, Cicone, Rosenstock, M. H.
10 Smith, Schneider, Cleveland, and Marion:

11 On page 8, Section 5.24, Judicial Compensation,
12 in line 20 after the word "spouse," add the following words:
13 "or to the surviving spouse of a deceased judge,".

14 THE PRESIDENT: The amendment is submitted by
15 Delegate Mudd and seconded by the co-sponsors.

16 The Chair recognizes Delegate Mudd.

17 DELEGATE MUDD: Mr. President and ladies and
18 gentlemen of the Convention:

19 The last sentence of section 5.24 now reads as
20 follows: "A pension payable to a retired judge or his sur-
21 viving spouse, pursuant to the provisions in effect during

1 his continuance in office, shall not be reduced."

2 Upon further consideration by the committee that
3 language was found to be restrictive and did not allow
4 for a pension to be paid in the strict interpretation of the
5 language to the surviving spouse of a judge who died be-
6 fore retirement.

7 Accordingly, the purpose of this amendment is
8 to insert in line 20, after "surviving spouse," "or to
9 the surviving spouse of a deceased judge,".

10 The intention of the amendment is solely to
11 protect the surviving spouse of a judge who might die
12 before retirement, and thus insure to her no reduction
13 in the pension to which the deceased judge was entitled
14 at the time of his demise.

15 We feel that this amendment is necessary to
16 carry out the intention of the committee recommendations
17 to protect the pension rights of judges as well as the sur-
18 viving spouses of judges; and we therefore ask the Con-
19 vention to vote for this amendment, which will insure that
20 the surviving spouse of a judge who dies before retirement
21 will receive the pension to which she is entitled without

1 diminution. We therefore ask you to vote in favor of the
2 amendment.

3 THE PRESIDENT: Are there any questions of the
4 sponsor of the amendment?

5 Delegate Carson.

6 DELEGATE CARSON: Chairman Mudd, will you tell
7 us if there are any provisions in the present Constitution
8 guaranteeing judges pensions and pensions for judges'
9 wives?

10 THE PRESIDENT: Delegate Mudd.

11 DELEGATE MUDD: In the present Constitution?
12 I don't think so.

13 THE PRESIDENT: Delegate Carson.

14 DELEGATE CARSON: May I ask you what policy
15 reason moved the committee to put all this detail about
16 judges' pensions and judges' wives' pensions in the
17 Constitution?

18 THE PRESIDENT: Delegate Mudd.

19 DELEGATE MUDD: Well, in this particular section,
20 Delegate Carson, to insure there be no diminution to
21 those that have heretofore existed by statute and with

1 respect to which rights have been accrued.

2 THE PRESIDENT: Are there any further ques-
3 tions of the committee chairman?

4 Is there any further discussion?

5 Delegate Grant.

6 DELEGATE GRANT: I had the same question for
7 Delegate Mudd that I asked a while ago. This is not
8 intended to be a restriction if they were to make broader
9 pension grants?

10 THE PRESIDENT: Delegate Mudd.

11 DELEGATE MUDD: Absolutely not.

12 THE PRESIDENT: Are there any further questions
13 of Chairman Mudd?

14 Any further discussion? Are you ready for the
15 question?

16 The question arises on the adoption of Amend-
17 ment 3.

18 The clerk will ring the quorum bell.

19 The question arises on the adoption of Amend-
20 ment 3. A vote Aye is a vote in favor of the amendment.
21 A vote No is a vote against.

1 Cast your votes.

2 (Whereupon, a roll call vote was taken.)

3 THE PRESIDENT: Has every delegate voted? Does
4 any delegate desire to change his vote?

5 The clerk will record the vote.

6 There being 83 votes in the affirmative and
7 30 in the negative, the motion is carried. The amendment
8 is adopted.

9 The next amendment is with respect to section
10 5.25, Amendment C.

11 Do you desire to offer your Amendment C, Delegate
12 Mudd?

13 DELEGATE MUDD: Yes, Mr. President.

14 THE PRESIDENT: The pages will distribute
15 Amendment C -- "C" for "Charlie".

16 This will be Amendment No. 4. The clerk will
17 read the amendment.

18 MR. QUILLEN: Amendment No. 4 to Committee
19 Recommendation JB-1 as amended by Report No. S&D-8, by
20 Delegates Mudd, Hickman, Kahl, Henderson, Harkness, J. H.
21 Smith, Hargrove, Dulany, Bradshaw, Cicone, Rosenstock, M. H.

1 Smith, Schneider, Cleveland, and Marion:

2 On page 8, Section 5.25. Restriction of Non-
3 Judicial Activities, in line 28 after the word "seek" in-
4 sert the word: "public".

5 THE PRESIDENT: The amendment is offered by
6 Delegate Mudd and seconded by the co-sponsors.

7 The Chair recognizes Delegate Mudd.

8 DELEGATE MUDD: Mr. President, this is an
9 amendment, I think I mentioned in previous discussion of
10 this section, which deals with restrictions on non-judicial
11 activities.

12 Upon reflection it was a conclusion of the
13 Committee on the Judicial Branch that the language "seek
14 elective office" in line 28 and "seeking elective office"
15 in line 36 might perhaps be interpreted as unduly restric-
16 tive. It is not intended to prohibit elective office
17 that might not be in the category of public office.

18 Therefore, the purpose of this amendment is
19 merely to insert the word "public" before "elective" in
20 those two lines, and thereby reduce the restriction on non-
21 judicial office to seeking public elective office.

1 We therefore ask the support of the Convention
2 in adopting this amendment.

3 THE PRESIDENT: Are there any questions of the
4 sponsor of the amendment?

5 Delegate Gleason.

6 DELEGATE GLEASON: As I understand it, your con-
7 cern is if you just have the word "elective" it might
8 be construed to mean "elective" in a private organization
9 rather than a public?

10 THE PRESIDENT: Delegate Mudd?

11 DELEGATE MUDD: It was out thought, Delegate
12 Gleason, that it might be so strictly interpreted and
13 possibly even prevent a judge from seeking the
14 position of vestryman in his church, or some such posi-
15 tion as that.

16 THE PRESIDENT: Is there any further discussion?
17 Are you ready for the question?

18 The clerk will ring the quorum bell.

19 The question arises on the adoption of Amendment
20 No. 4. A vote Aye is a vote in favor of the amendment. A
21 vote No is a vote against.

1 Cast your votes.

2 (Whereupon, a roll call vote was taken.)

3 THE PRESIDENT: Has every delegate voted?

4 Does any delegate desire to change his vote?

5 The clerk will record the vote.

6 There being 104 votes in the affirmative and
7 2 in the negative, the amendment is adopted.

8 The next amendment is an amendment to section
9 5.25.

10 Delegate Mudd, do you desire to offer your
11 Amendment D?

12 DELEGATE MUDD: Yes, Mr. President.

13 THE PRESIDENT: The pages will please distribute
14 Amendment D -- "D" for "David".

15 The clerk will read the amendment. This will
16 be Amendment No. 5.

17 MR. QUILLEN: Amendment No. 5 to Committee
18 Recommendation JB-1, as amended by Report No. S&D-8, by
19 Delegates Mudd, Hickman, Kahl, Henderson, Harkness, J.H.
20 Smith, Hargrove, Dulany, Bradshaw, Cicone, Rosenstock, M.H.
21 Smith, Schneider, Cleveland, and Marion:

1 On page 8, Section 5.25, Restriction of Non-
2 Judicial Activities, in line 36 after the word "seeking"
3 add the word "public";
4 and in line 37 strike out the word "holding";
5 and in the same line after the word "any" add the word
6 "other".

7 THE PRESIDENT: The amendment having been
8 submitted by Delegate Mudd and seconded by his co-sponsors,
9 the Chair recognizes Delegate Mudd.

10 DELEGATE MUDD: Mr. President, ladies and
11 gentlemen:

12 I apologize for an error in speaking in favor
13 of Amendment 4. That amendment inserted the word
14 "public" only in line 28 between "seek" and "elective".

15 This amendment now before you, Amendment No,
16 5, inserts the word "public" in line 36 between "seeking"
17 and "elective", accomplishing the same purpose in that line
18 36 as we sought to accomplish by Amendment 4 in line 28.

19 The last sentence of section 5.25 with the amend-
20 ment now proposed would read as follows:

21 "No retired judge while practicing law or

1 seeking public elective office or any other public
2 office for profit shall be paid any compensation for his
3 judiciary service."

4 The second part of the amendment deletes the
5 word "holding" in line 37 and inserts the word "other"
6 between the words "any" and "public".

7 It was the view of the committee after further
8 considering this matter, or at least the view of the
9 sponsors of this amendment who are members of the Committee
10 on the Judicial Branch that this was a necessary and rea-
11 sonable amendment consistent with our views as to the
12 restrictions on non-judicial activities. We therefore ask
13 that you vote in favor of Amendment 5, which clarifies the
14 last sentence of that section consistent with the
15 intention of the committee at the time its recommendation
16 was submitted to the Committee of the Whole.

17 THE PRESIDENT: Are there any questions of the
18 committee chairman?

19 Delegate Marion?

20 DELEGATE MARION: Chairman Mudd, is it my
21 understanding that the portion of this amendment which is

1 found in lines 5 through 8 of the amendment would have the
2 effect of allowing a judge to continue to receive his pen-
3 sion if he holds a public office of profit for which he
4 can't receive his pension during the time that he seeks it,
5 if I make myself clear?

6 THE PRESIDENT: Delegate Mudd.

7 DELEGATE MUDD: May I defer answering Delegate
8 Marion's question until I correct the amendment, Mr.
9 President?

10 May I ask unanimous consent to delete all of line
11 5 of Amendment 5 and leave the word "holding" in?

12 THE PRESIDENT: Is there any objection to
13 the modification suggested, to delete all of line 5 of the
14 amendment?

15 The Chair hears none.

16 The amendment will be considered as so modi-
17 fied.

18 Delegate Marion.

19 DELEGATE MARION: As I understand it now, with
20 that modification of the amendment it would read "seeking
21 elective office or holding any other public office of

1 profit."

2 DELEGATE MUDD: Correct.

3 THE PRESIDENT: Delegate Marion.

4 DELEGATE MARION: Would that mean that he
5 would be barred from receiving his pension while he seeks
6 an elective office, but once he has attained it, after
7 having sought it, that he then can receive his pension as
8 well as whatever compensation he might receive for serving
9 in the elective office?

10 DELEGATE MUDD: Oh, I don't get that out of it.

11 THE PRESIDENT: Delegate Marion.

12 DELEGATE MARION: Is that not the reason for
13 the insertion of the word "other" before "public office
14 of profit" in line 37?

15 THE PRESIDENT: Delegate Mudd.

16 DELEGATE MUDD: My interpretation is that
17 "holding any other public office of profit" would include
18 holding a public office which he did not acquire by elec-
19 tive processes.

20 THE PRESIDENT: I am not sure you understand
21 the question, Delegate Mudd.

1 I think his question is directed to the fact that,
2 as the sentence is now proposed to be read, it would mean
3 no retired judge while practicing law or seeking public
4 office or holding other public office shall be paid a pen-
5 sion, so that if he sought elective office he would
6 not have the pension while he sought it, but after he
7 succeeded and was holding the elective office he would
8 have the pension.

9 Delegate Mudd?

10 DELEGATE MUDD: Certainly that is not the inten-
11 tion of the proponents of the amendment, and it actually
12 may be that we have not proposed this amendment in the
13 form intended.

14 THE PRESIDENT: Delegate Marion.

15 DELEGATE MARION: Could I, as one of the spon-
16 sors of the amendment, suggest that lines 7 and 8 of
17 the amendment be deleted also, and I think that gets back
18 to what I understand your intention is in offering the
19 amendment.

20 THE PRESIDENT: Delegate Mudd, did you under-
21 stand the suggestion?

1 DELEGATE MUDD: The effect of that would be
2 just to eliminate the insertion of the word "other".

3 THE PRESIDENT: Yes.

4 DELEGATE MUDD: I concur, and will ask unani-
5 mous consent to delete.

6 THE PRESIDENT: Is there a-y objection to
7 modifying the amendment by striking lines 7 and 8?
8 Is there an objection?

9 Delegate Weidemeyer.

10 DELEGATE WEIDEMEYER: I am wondering if you
11 wouldn't have to strike line 5, also, to be consistent.

12 THE PRESIDENT: That has already been stricken.

13 There is no objection to striking lines 7 and 8.
14 The amendment will be considered as modified by striking
15 those two lines.

16 This leaves the amendment consisting only of
17 lines 1, 2 and 3.

18 Delegate Chabot, did you have a further ques-
19 tion, or has your question been answered?

20 Delegate Macdonald, did you have further
21 question?

1 Delegate Bamberger, did you have a further
2 question?

3 Are there any other questions of the sponsor?

4 Delegate Bamberger, the amendment which you have
5 sent to the Chair I think would be proper now to be offered
6 as a substitute for Amendment No. 5, if you desire to do
7 so.

8 DELEGATE BAMBERGER: I will offer it, then, Mr.
9 President.

10 THE PRESIDENT: The pages will distribute Amend-
11 ment L -- "L" for "lonely".

12 This will be Amendment 5A, as a substitute
13 for Amendment 5.

14 The clerk will read the amendment.

15 MR. QUILLEN: Amendment 5A as a substitute for
16 Amendment 5 to Committee Recommendation No. JB-1, by
17 Delegates Bamberger and Gilchrist:

18 On page 8, section 5.25, Restriction of Non-
19 Judicial Activities, in line 36 strike out the words
20 "seeking elective office or".

21 THE PRESIDENT: The amendment is submitted

1 by Delegate Bamberger and seconded by Delegate Gilchrist.

2 The Chair recognizes Delegate Bamberger.

3 ~~DELEGATE~~ BAMBERGER: I want to point out that
4 in the first part of section 5.25 we are talking about the
5 conduct of a judge on the bench, and I certainly have no
6 quarrel with the fact that while a man is serving as a
7 judge on the bench he should not seek any elective office,
8 but in the last part of section 5.25 we are not talking about
9 a judge who is actively sitting on the bench; we are
10 talking about a retired judge. As this is now written
11 and as proposed to be amended by Amendment No. 5, it would
12 prohibit a retired judge, at the loss of his pension, from,
13 for instance, being a candidate for a school board.

14 Now, that is an elective office. I don't
15 think it is an office of profit, but the prohibition goes
16 against seeking any elective office.

17 It seems to me that the problem to which we
18 should be addressing ourselves is essentially one of
19 dual compensation, that no man who has served on the
20 bench and is receiving a pension from the State by virtue
21 of that service should also hold some public office

1 for which he is compensated -- that is, a public office
2 of profit.

3 The amendment marked L would strike the words
4 "seeking elective office," so that that sentence would
5 read: "No retired judge while practicing law or holding
6 any public office of profit shall be paid any pension for
7 his judicial service."

8 There is, of course, no prohibition against a
9 retired judge engaging in any kind of remunerative business
10 activity. It seems to me that what we ought to get at is
11 the double compensation aspect, that a man who is receiv-
12 ing a pension for judicial service should not also hold a
13 public office for which he is compensated by the State.

14 This amendment would do that by saying that
15 he loses his pension if he practices law or if he holds
16 a public office of profit.

17 THE PRESIDENT: Are there any questions of the
18 sponsor of Amendment 5A?

19 Delegate Dulany.

20 DELEGATE DULANY: Will the sponsor yield to a
21 question?

1 DELEGATE BAMBERGER: Yes, sir.

2 THE PRESIDENT: Delegate Dulany.

3 DELEGATE DULANY: You understand a retired
4 judge can perform judicial services so that he could,
5 under your amendment, be sitting as a judge and also
6 participating; is that correct?

7 THE PRESIDENT: Delegate Bamberger.

8 DELEGATE BAMBERGER: That is possible, but most
9 unlikely.

10 I realize that problem.

11 A retired judge may be called to active service
12 and to sit on the bench by the Court of Appeals or by the
13 chief judge with the approval of the majority of the Court
14 of Appeals. I just can't imagine that the chief judge
15 of the Court of Appeals would call to active service a
16 judge who at that time also held some public office.

17 Rather than trying to take care of that expli-
18 citly, I would leave it to the fate of the Court of
19 Appeals.

20 THE PRESIDENT: Delegate Dulany.

21 DELEGATE DULANY: I just wanted to point out

1 that the situation did exist.

2 THE PRESIDENT: Delegate Grant.

3 DELEGATE GRANT: I have a question of the
4 sponsor.

5 THE PRESIDENT: Delegate Bamberger, do you
6 yield for a question?

7 DELEGATE BAMBERGER: Yes.

8 THE PRESIDENT: Delegate Grant.

9 DELEGATE GRANT: Would you hold it within the
10 realm of possibility that if a judge did occupy such an
11 office but would forego his salary in the office he could
12 then be classed as in an office not for profit?

13 THE PRESIDENT: Delegate Bamberger.

14 DELEGATE BAMBERGER: I think the definition
15 goes to the office, and if it is an office of profit and he
16 holds it, he loses his pension, even if he would foresake
17 the compensation of that public office.

18 If I may respond further to Delegate Dulany's
19 question, you have the same problem with respect to a re-
20 tired judge who might be engaging in the practice of law.
21 There is nothing in here that prohibits the Court of Appeals

1 from calling him to active service -- I am certain it
2 won't happen, but it is possible.

3 THE PRESIDENT: Are there any other questions
4 of the sponsor?

5 Delegate Wagandt.

6 DELEGATE WAGANDT: Delegate Bamberger, would you
7 yield to a question?

8 DELEGATE BAMBERGER: Yes.

9 THE PRESIDENT: Delegate Wagandt.

10 DELEGATE WAGANDT: By this proposal you would
11 also permit a retired judge to run for an elective party
12 office?

13 THE PRESIDENT: Delegate Bamberger.

14 DELEGATE BAMBERGER: I don't think an elective
15 party office is an office of profit. I don't think there
16 is any compensation connected with that.

17 THE PRESIDENT: Delegate Wagandt.

18 DELEGATE WAGANDT: You are correct there.
19 But it would permit a judge to engage in partisan politi-
20 cal activity -- a retired judge, that is.

21 THE PRESIDENT: Delegate Bamberger.

1 DELEGATE BAMBERGER: It would permit a retired
2 judge to engage in partisan political activity with the
3 knowledge that if he was successful and was elected to a
4 public office of profit that he would then lose his pen-
5 sion. It is just directed at getting away from the
6 dual compensation; and the inconsistency, it seems to me,
7 is that we have no prohibition against a retired judge
8 engaging in all kinds of business activities.

9 I don't think he ought to be restricted from
10 engaging in public activities unless there is the factor
11 of dual compensation.

12 THE PRESIDENT: Delegate Wagandt.

13 DELEGATE WAGANDT: In other words, Delegate
14 Bamberger, you feel it would be perfectly appropriate for a
15 retired judge to, say, serve as Chairman of the
16 Republican City Committee?

17 THE PRESIDENT: Delegate Bamberger.

18 DELEGATE BAMBERGER: I don't see why he couldn't
19 do that under this section.

20 THE PRESIDENT: Delegate Grant, did you have
21 a further question?

1 DELEGATE GRANT: Just one further clarifying
2 question.

3 By "public office of trust" -- "of profit",
4 you do not intend to include court appointments such
5 as receiverships, guardianships, and so forth?

6 DELEGATE BAMBERGER: I am sorry. I can't respond
7 to that question. I am not sure that they are public offi-
8 ces of profit.

9 THE PRESIDENT: Delegate Grant.

10 DELEGATE GRANT: Well, it is a question,
11 of course, of whether he is practicing law. It is not your
12 intention that the definition of "office of trust" would
13 include such positions?

14 THE PRESIDENT: Delegate Bamberger.

15 DELEGATE BAMBERGER: No, it is not.

16 THE PRESIDENT: Delegate Cardin, do you have a
17 question?

18 DELEGATE CARDIN: Yes, please.

19 THE PRESIDENT: Delegate Bamberger, do you
20 yield to a question?

21 DELEGATE BAMBERGER: Yes.

1 THE PRESIDENT: Delegate Cardin.

2 DELEGATE CARDIN: Would you interpret the words
3 "seeking public office" as far as a retired judge is
4 concerned, would that prevent a retired judge from running
5 for the next constitutional convention?

6 THE PRESIDENT: Delegate Bamberger.

7 DELEGATE BAMBERGER: I think that has been held
8 not to be an office of profit.

9 The Chair is more familiar with that than I.

10 THE PRESIDENT: That is correct -- under the
11 existing Constitution, at least.

12 Delegate Cardin.

13 DELEGATE CARDIN: I am referring to the words
14 "seeking public elective office."

15 DELEGATE BAMBERGER: As section 5.25 is now
16 written, I understand it would prohibit a retired judge
17 from seeking election to another constitutional convention
18 because that is a public elective office.

19 THE PRESIDENT: Are there any other questions?
20 Delegate Bennett.

21 DELEGATE BENNETT: Could a retired judge serve

1 on a nominating commission for judges?

2 THE PRESIDENT: The Chair would point out some
3 of these questions, at least, are not directed to Delegate
4 Bamberger's amendment. They may be properly directed to
5 the basic Amendment 5.

6 Can you answer the question, Delegate Bamberger?

7 DELEGATE BAMBERGER: I can answer it by saying
8 that if my amendment is adopted, it would not prohibit
9 a retired judge from serving on such a commission, because
10 it is not a public office of profit, as I understand the
11 term.

12 THE PRESIDENT: Are there any other questions
13 of the sponsor of the amendment? Is there any further
14 discussion?

15 The clerk will ring the quorum bell.

16 The question arises on the adoption of Amendment
17 5A. This is not a vote on Amendment 5. The question is
18 on the adoption of Amendment 5A as a substitute for Amend-
19 ment 5.

20 A vote Aye is a vote in favor of Amendment 5A
21 as a substitute for Amendment 5. A vote No is a vote

1 No is a vote against.

2 For what purpose does Delegate Macdonald rise?

3 DELEGATE MACDONALD: A parlaimentary inquiry,
4 sir.

5 THE PRESIDENT: State the inquiry.

6 DELEGATE MACDONALD: Did the chairman of the
7 committee express himself on this amendment?

8 THE PRESIDENT: I believe so, but maybe I am
9 wrong.

10 Delegate Mudd.

11 DELEGATE MUDD: I don't think you offered me
12 an opportunity, Mr. President.

13 THE PRESIDENT: I am sorry, sir.

14 You have the opportunity now.

15 DELEGATE MUDD: Very frankly, ladies and
16 gentlemen of the Convention, this exact amendment proposed
17 now as a substitute was the first idea that the members
18 of the Committee on the Judicial Branch had as to the
19 amendment to this section, and I did circulate a memo
20 to receive 15 delegates to support the amendment in the
21 form that Delegate Bamberger now proposes, and I could

1 not receive the 15 sponsors. I could receive the 15 sponsors
2 within the committee for the amendment in the form that it
3 has been proposed and is now identified as Amendment No. 5.

4 It seems to be the view of the majority of the
5 sponsors of Amendment 5 that it is unbecoming, and
6 we think desirable to discourage retired judges from
7 seeking office and engaging in political activities, and
8 the thought that sponsored the Amendment 5 was to re-
9 strict the retired judges in that respect, and not allow
10 them to seek public office while receiving retirement pay
11 after having served on the bench and during the time that
12 they were receiving retirement, which is, of course, an
13 emolument for their services on the bench.

14 The sponsors of Amendment 5 would, therefore,
15 ask you to vote against the substitute proposed by Delegate
16 Bamberger.

17 THE PRESIDENT: Are you ready for the question?

18 Delegate Gleason.

19 DELEGATE GLEASON: Mr. Chairman, as I under-
20 stand the comments of the Chairman of the Judiciary Com-
21 mittee, it would be unbecoming for a retired judge to

1 seek political office, and, at the same time, receive
2 the retirement which he already had earned as a result of
3 his service, public service. This kind of rationale is
4 way beyond me. I just hope people support the Bamberger
5 amendment.

6 THE PRESIDENT: Is there any further discus-
7 sion? Are you ready for the question?

8 The clerk will ring the quorum bell.

9 The question arises on the adoption of Amendment
10 5A as a substitute for Amendment 5. This is not a vote on
11 Amendment 5, but merely a vote on the substitution.

12 A vote Aye is a vote in favor of the amendment,
13 Amendment 5A, as a substitute for Amendment 5. A vote
14 No is a vote against.

15 After this vote, the Chair will submit to you
16 Amendment 5, either in its original form or with the
17 substitute in its place.

18 A vote now on Amendment 5A, a vote Aye is a
19 vote in favor of the substitution; a vote No, a vote against.

20 Cast your votes.

21 (Whereupon, a roll call vote was taken.)

1 THE PRESIDENT: Has every delegate voted?
2 Does any delegate desire to change his vote?

3 The clerk will record the vote.

4 There being 76 votes in the affirmative and 34
5 in the negative, the motion is carried. Amendment 5A is
6 substituted for Amendment 5.

7 The question now arises on the adoption of
8 Amendment 5A as a substitute for Amendment 5. Is there
9 any further discussion? Are you ready for the question?

10 A vote Aye is a vote in favor of Amendment 5A
11 as substituted for Amendment 5. A vote No is a vote
12 against.

13 For what purpose does Delegate Schneider rise?

14 DELEGATE SCHNEIDER: I was of the understanding
15 this was an amendment to the amendment, rather than
16 a substitute amendment, because we still have the problem
17 of the word "public," and we will have to deal with that
18 again if we handle it any other way.

19 THE PRESIDENT: You don't have the problem,
20 because Amendment 5A deleted the entire phrase, so you
21 wouldn't have the word "public" if the whole phrase is

1 gone.

2 Is there any further discussion? Are you
3 ready for the question?

4 The question arises on the adoption of Amend-
5 ment 5A as substituted for Amendment 5. A vote Aye is a
6 vote in favor of the substituted amendment. A vote No is
7 a vote against.

8 Cast your vote.

9 (Whereupon, a roll call vote was taken.)

10 THE PRESIDENT: Has every delegate voted?
11 Does any delegate desire to change his vote?

12 The clerk will record the vote.

13 There being 95 votes in the affirmative and 16
14 in the negative, Amendment 5A as a substitute for Amendment
15 5 is adopted.

16 I think the Chair should indicate that on the
17 basis of the relatively few amendments still to be consid-
18 ered, it would be my objective to try to finish considera-
19 tion of Committee Recommendation JB-1 before supper recess,
20 in which event there would be no session this evening.
21 The Convention would recess then until a fairly late hour

1 tomorrow afternoon, at which time we would have to have
2 for consideration three second readings. You have already
3 received two of them. The third one is being printed,
4 and there is some mechanical problem, but I hope it will
5 be here very shortly. I would hope that you can remain
6 long enough to receive that copy so that you will be able
7 to take with you this evening all three copies.

8 This will give the Committee on Style a chance
9 for further meeting this evening, and also tomorrow
10 morning.

11 Delegate Armor has handed me a report, weather
12 report, indicating that snow is expected, beginning in
13 the early hours tomorrow morning and continuing all day
14 Thursday. I would think this would mean that it would be
15 desirable for all who can to make arrangements to stay over
16 this evening. Our whole calendar is such that we can't
17 afford to adjourn for a day. We must continue.

18 I hope to conclude consideration of all second
19 readings this week, and hopefully to be able to do so by
20 Friday, so that we would not have a session on Saturday.
21 If we are able to do this, we would also, of course,

1 not have a session on Monday, but probably would have a
2 session on Tuesday and Wednesday.

3 The next amendment is with respect to section
4 5.26.

5 Delegate Mudd, do you desire to offer your
6 Amendment E?

7 DELEGATE MUDD: Yes, Mr. President.

8 THE PRESIDENT: The pages will please distribute
9 Amendment E -- "E" for "easy". This will be Amendment
10 No. 6.

11 The Clerk will read the amendment.

12 MR. QUILLEN: Amendment No. 6 to Committee
13 Recommendation JB-1 as amended by Report No. S&D-8, by Dele-
14 gates Mudd, Hickman, Kahl, Henderson, Harkness, J. H.
15 Smith, Hargrove, Dulany, Bradshaw, Cicone, Rosenstock, M. H.
16 Smith, Schneider, Celveland, and Marion:

17 On page 9, Section 5.26, Commission on Judicial
18 Disabilities, in line 4 strike out the period and insert
19 in lieu thereof the following:

20 ", but the General Assembly shall provide
21 by law for shorter terms for the three judicial members and

1 one of the other members first appointed, in order to es-
2 tablish staggered terms of office. A vacancy on the
3 Commission shall be filled for the remainder of the term."

4 THE PRESIDENT: Delegate Mudd, in line with
5 the amendment, the modification to the other amendment,
6 do you desire to strike the word "staggered" in line 7 and
7 substitute the word "overlapping"?

8 DELEGATE MUDD: Yes, Mr. President.

9 THE PRESIDENT: Is there any objection?

10 The Chair hears none.

11 The amendment will be modified, in line
12 7 strike the word "staggered", insert the word "over-
13 lapping".

14 Do I understand also that you would desire to
15 strike the word "provide" in line 4 and the word "for"
16 after the word "law" in line 5, and substitute the word
17 "prescribe" after the word "shall" in line 4?

18 DELEGATE MUDD: Yes, Mr. President.

19 THE PRESIDENT: Is there any objection?

20 The Chair hears none.

21 The amendment will be so modified.

1 Strike the word "provide" in line 4 and insert the word
2 "prescribe". Strike the first word "for" in line 5.

3 The amendment is submitted by Delegate Mudd,
4 seconded by the co-sponsors.

5 The Chair recognizes Delegate Mudd.

6 DELEGATE MUDD: Mr. President, ladies and
7 gentlemen of the Convention:

8 This amendment is designed to accomplish the same
9 objective with respect to the Commission on Judicial Dis-
10 abilities as we already have accomplished by the amendment
11 proposed by the same sponsors with respect to the Nominat-
12 ing Commission.

13 Section 5.26 as submitted and adopted proposes
14 the Commission on Judicial Disabilities consist of three
15 judges, one lay member and one lawyer member. The purpose
16 of this amendment is that the General Assembly shall pre-
17 scribe by law shorter terms for the three judicial members
18 and one of the other members first appointed, in order to
19 establish overlapping terms of office.

20 The Committee on Judicial Disabilities is com-
21 posed of only five members, one judge from the Court of

1 Appeals, one judge from the Intermediate Court of Appeals,
2 and one from the Superior Court; and the General Assembly,
3 if this amendment is adopted as we request, would provide
4 for shorter terms for the three judicial members and one
5 of the other members.

6 This is consistent with the suggestion and repre-
7 sentation we made as to the intention of the Committee at
8 the time our JB-1 was debated before the Committee of the
9 Whole; and is also consistent with the amendment, as I
10 previously indicated, already adopted with respect to
11 the nominating commissions.

12 We therefore ask you to vote for this amendment.

13 THE PRESIDENT: Are there any questions of the
14 sponsor of the amendment?

15 The Chair hears none.

16 Is there any discussion? Are you ready for
17 the question?

18 The clerk will ring the quorum bell.

19 The question arises on the adoption of Amendment
20 No. 6. A vote Aye is a vote in favor of the amendment.
21 A vote No is a vote against.

1 Cast your votes.

2 (Whereupon, a roll call vote was taken.)

3 THE PRESIDENT: Has every delegate voted?

4 Does any delegate desire to change his vote?

5 The clerk will record the vote.

6 There being 88 votes in the affirmative and 10
7 in the negative, the motion is carried. The amendment is
8 adopted.

9 That concludes consideration of all amendments
10 sponsored by 15 or more delegates.

11 We revert now to consideration of other amend-
12 ments. Are there any other amendments to section 5.01?

13 The Chair hears none.

14 Delegate Kikrland, do you still desire to
15 offer your Amendment I?

16 Will the page: please try to find Delegate Kirk-
17 land?

18 Delegate Kirkland, do you still desire to offer
19 your Amendment I?

20 DELEGATE KIRKLAND: It is really not of any use,
21 now.

1 THE PRESIDENT: Thank you, sir.

2 Delegate Johnson, do you still desire to offer
3 your Amendment J at this time?

4 DELEGATE JOHNSON: Yes, Mr. President.

5 THE PRESIDENT: Are there any other amendments
6 to section 5.03? Section 5.04? Section 5.05? Section
7 5.06? Section 5.07? Section 5.08? Section 5.09? Section
8 5.10? Section 5.11? Section 5.12? Section 5.13?

9 The Chair hears none.

10 The pages will please distribute Amendment J,
11 "J" for "jig".

12 I understand Amendment J was heretofore distri-
13 buted. This will be Amendment 7.

14 The Clerk will read the amendment.

15 MR. QUILLEN: Amendment No. 7 to Committee
16 Recommendation JB-1 as amended by Report No. S&D-8, by
17 Delegates Johnson and Jett:

18 On page 4, Section 5.14, Eligibility for Nomi-
19 nation and Appointment as Judge, in line 42 after the word
20 "State" insert the following:
21 "for at least five years immediately preceding his nomina-
tion."

1 THE PRESIDENT: Amendment 7 is submitted
2 by Delegate Johnson and seconded by Delegate Jett.

3 The Chair recognizes Delegate Johnson.

4 DELEGATE JOHNSON: As a member of the Judicial
5 Branch Committee it was my clear understanding that
6 this was the intention of our committee. I double checked
7 with Chairman Mudd, and he concurs. You will recall that
8 I asked Chairman Penniman whether or not the Committee on
9 Style meant to maintain this intent by the Judicial Branch
10 Committee and the Committee of the Whole, and he concurred.

11 I ask that this amendment be adopted because I
12 believe that you will find, as some of us have, that there
13 is a possibility of misunderstanding in its current draft-
14 ing form.

15 In other words, someone may misinterpret it or
16 attempt to interpret it to read that while an individual
17 in order to be eligible for the office of judge must have
18 been authorized to practice law in this State for five years
19 preceding his nomination, he need not be a citizen in the
20 State for five years immediately preceding his nomination.

21 In order to make the intent of the committee

1 and the intent of the Committee of the Whole perfectly
2 clear, I urge the adoption of this amendment.

3 THE PRESIDENT: Delegate Mudd.

4 DELEGATE MUDD: Mr. President and ladies and
5 gentlemen of the Convention:

6 Delegate Johnson has correctly stated our in-
7 tention, and we agree completely that it is the intention
8 of the committee; and we feel the intention and clear
9 meaning of section 5.14 as now drafted is that a judge,
10 to be eligible, is required to have been a citizen of the
11 State for at least five years immediately preceding his
12 nomination.

13 We feel, and I believe Delegate Penniman con-
14 curred, that the use of the word "and" after "State"
15 clearly indicates that the proviso for five years imme-
16 diately preceding his nomination is meant to include resi-
17 dent as well as practice of law.

18 We do not oppose the amendment, except to say that
19 we feel it is unnecessary.

20 THE PRESIDENT: Delegate Penniman, do you
21 have a comment?

1 DELEGATE PENNIMAN: My comment, Mr. Chairman,
2 would be almost identical with that of Chairman Mudd.
3 It seems to me that when we say "shall have been a
4 citizen of the State and shall have been authorized to
5 practice law", it is clear that both shall have been for
6 the period of five years. I do not object to the amendment,
7 except that it seems to me it is redundant and will add
8 some words to the Constitution that are not needed.

9 THE PRESIDENT: Is there any further discus-
10 sion? Are you ready for the question?

11 The Clerk will ring the quorum bell.

12 The question arises on the adoption of Amend-
13 ment No. 7.

14 A vote Aye is a vote in favor of the amendment.
15 A vote No is a vote against.

16 Cast your votes.

17 (Whereupon, a roll call vote was taken.)

18 THE PRESIDENT: Has every delegate voted?
19 Does any delegate desire to change his vote?

20 The clerk will record the vote.

21 There being 47 votes in the affirmative and

1 55 in the negative, the motion is lost. The amendment
2 is rejected.

3 Are there any other amendments to Section 5.14?

4 Are there any amendments to section 5.15?
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1 Any amendments to section 5.16?

2 Any amendments to section 5.17?

3 Any amendments to section 5.18?

4 Any amendments to section 5.19?

5 Delegate Jett.

6 DELEGATE JETT: There is an amendment being
7 printed to section 5.15. I thought it would be on our desk.

8 THE PRESIDENT: How long ago was the amendment
9 sent over to be printed?

10 DELEGATE JETT: I would say about a half hour
11 ago.

12 THE PRESIDENT: This is your amendment, Delegate
13 Jett?

14 DELEGATE JETT: I don't have it.

15 THE PRESIDENT: On page 5, line 27, add a new
16 sentence. Is that the one?

17 DELEGATE JETT: That is the one.

18 THE PRESIDENT: Pages please distribute amendment
19 K. "K" for King.

20 This will be amendment No. 8.

21 The Clerk will read the amendment.

1 MR. QUILLEN: Amendment No. 8 to committee
2 recommendation JB-1, by Delegates Jett and Johnson.

3 On page 5, section 5.15, Nomination and
4 Appointment in line 27, after the period add this new
5 sentence:

6 "If no such list of nominees is submitted to
7 the Governor within the time prescribed, then he shall
8 appoint an eligible person to fill the vacancy."

9 THE PRESIDENT: The amendment submitted by
10 Delegate Jett and seconded by Delegate Johnson, the
11 Chair recognizes Delegate Jett.

12 DELEGATE JETT: Mr. Chairman and fellow
13 delegates, this amendment is pretty evident on its face.
14 The intention is to take care of that contingency where the
15 nominating committee fails to submit a list of nominees.
16 Should that occur, this amendment provides that if no list
17 of nominees is submitted to the Governor within the time
18 prescribed, then he shall appoint an eligible person
19 to fill the vacancy. We feel that should take care.

20 We urge the adoption of the amendment.

21 THE PRESIDENT: Any questions of the sponsor of

1 of the amendment?

2 Delegate Borom.

3 DELEGATE BOROM: I would like to ask Delegate
4 Jett if he wants to insert this after the period on line
5 27, or after the period on line 23.

6 DELEGATE JETT: We will leave that up to style,
7 delegate Borom. We had some question about that ourselves.
8 Our suggestion was that it should go at the end of 27, but
9 we have no really strong feeling on that point.

10 THE PRESIDENT: Any further question of the
11 sponsor of the amendment?

12 The Chair recognizes Delegate Mudd.

13 DELEGATE MUDD: Mr. President and ladies and
14 gentlemen of the Convention:

15 It is my recollection that amendment of the
16 same substance or similar to this was proposed in the Committee
17 of the Whole, and it was not successful, and it was rejected,
18 or it was withdrawn. We agree that there is an extremely
19 remote possibility that the nominating commission may not
20 furnish the list as this article contemplates, but we feel
21 that this is an unnecessary addition to section 5.15, number

1 one, because of the extremely remote possibility that the
2 Governor will not have a list from which point, as is
3 contemplated, but more particularly we feel that this
4 does open up the field to appointments in the manner that
5 is now allowed, and which we feel the committee recommendation,
6 as heretofore adopted, is designed to avoid, and in that
7 respect improve the method of selecting judges.

8 Accordingly, the committee will oppose this
9 amendment, and I urge the delegates to vote against it.

10 THE PRESIDENT: Delegate Johnson.

11 DELEGATE JOHNSON: Mr. President and ladies
12 and gentlemen: This is a clarification amendment, and one
13 that I ask you to consider in light of the fact that we
14 now have an even number of individuals, lawyers and non-
15 lawyers, serving on the nominating commission.

16 This action was not taken until we met in the
17 Committee of the Whole. It was in the Committee of the
18 Whole that we deleted the judicial member of the nominating
19 commission.

20 Now, all this amendment proposes to do is to
21 sort of spur the nominating commission on to do the job

1 that he has b-en appointed or, in the case of attorneys,
2 elected to do. If we believe, as currently we do because
3 we so provide in section 5.15, that the Governor may not
4 appoint from the list, we provided a phrase that the Chief
5 Judge shall make appointments; it seems to me perfectly
6 consistent to take steps to protect the possibility of
7 the nominating commission either reaching an impasse, or
8 not doing the job it is appointed to do.

9 We feel perfectly confident that if the nominating
10 commission does that, the Governor will be able to appoint
11 outside the list after the lapse of 60 days that the
12 nominating commission will get down to business and will
13 submit the list.

14 You tell me what is going to happen if they don't.
15 We haven't provided if the nominating commission reaches
16 an impasse, or if the nominating commission does not submit
17 a list to the Governor, nothing happens. I suggest we
18 take care of it by way of this amendment.

19 THE PRESIDENT: Delegate Schneider.

20 DELEGATE SCHNEIDER: This would not spur the
21 nominating committee on. This would cause it perhaps to pass

1 the buck to the Governor, and if the Governor were of the
2 nature that he wanted to pack the committee, he could just
3 pack the lay members in there so he could balance it off
4 so they couldn't get a vote out of the committee on a
5 nomination, and then they would have to throw back to
6 him the appointment.

7 This would depend upon procedures adopted by the
8 nominating committee, if they required a majority vote or
9 three-fifths vote, some of the members could not show up,
10 and not appoint a nominee, and then the Governor would
11 be given the nomination and the whole Niles plan could be
12 defeated, so I would suggest defeat of the motion, and
13 I would urge defeat of this amendment.

14 If Mr. Johnson worries about an even committee,
15 perhaps we could worry about that and change the makeup
16 of the committee.

17 THE PRESIDENT: Any further questions?

18 Any further discussion?

19 The Clerk will ring the quorum bell.

20 The question arises on the adoption of amendment
21

7
1 No. 8. A vote Aye is a vote in favor of the amendment. A
2 vote No is a vote against.

3 Cast your votes.

4 Has every delegate voted?

5 Does any delegate desire to change his vote?

6 The Clerk will record the vote.

7 There being 46 votes in the affirmative and
8 64 in the negative, the motion is lost, and the amendment
9 is rejected.

10 Any other amendments to section 5.15? The Chair
11 hears none.

12 Any amendments to section 5.16? The Chair hears
13 none.

14 Any amendments to section 5.17? The Chair hears
15 none.

16 Any amendments to section 5.18? The Chair hears
17 none.

18 Any amendments to section 5.19?

19 Delegate Willis.

20 DELEGATE WILLIS: I have one for 5.20, Mr.
21 President.

1 THE PRESIDENT: Any amendments to section 5.19?

2 Delegate Willis, is your amendment printed?

3 DELEGATE WILLIS: I haven't seen it. I took
4 it over about an hour and a half ago.

5 THE PRESIDENT: Pages please distribute amendment
6 M. "M" for Mary. This shall be amendment No. 9.

7 The Clerk will read the amendment.

8 MR. QUILLEN: Amendment No. 9 to committee
9 recommendation No. JB-1, by Delegate Willis:

10 On page 7, section 5.20, Restrictions on Members
11 of Nominating Commissions, in line 3 strike out the words
12 "two years" and insert in lieu thereof the words "one year";
13 and in line 4 place a period after the word "commission" and
14 strike out the remainder of this line and all of lines 5 and
15 6.

16 THE PRESIDENT: The amendment is proposed by
17 Delegate Willis. Is there a second?

18 (The motion was duly seconded)

19 THE PRESIDENT: The amendment having been
20 seconded, the Chair recognizes Delegate Willis.

21 DELEGATE WILLIS: This is a very simple amendment.

1 I don't want to take a lot of time. In reading this I get
2 the feeling that a great many good people who serve on
3 nominating commissions will not be able to serve their
4 governments, whether they be local, state, national or
5 municipal, in any way, at least a year after they get off
6 of the commission.

7 I think that it immobilizes a lot of good talent
8 that we need these days in government, and I do not think that
9 it would be necessary to hold out a judicial candidate for
10 two years, either.

11 It would seem to me that the judges who elect
12 these judicial commission members by secret ballot could
13 put on this commission the very best candidates for judgeships
14 in their areas, and in a sense immobilize them for maybe as
15 much as six years from receiving an appointment to a
16 judicial position.

17 Therefore I think this is too restrictive. I do
18 not recall any good arguments given for it, when we had this
19 on the floor before.

20 THE PRESIDENT: Delegate Beatrice Miller, do
21 you have a question?

1 DELEGATE BEATRICE MILLER: I have a parliamentary
2 inquiry.

3 THE PRESIDENT: State your inquiry.

4 DELEGATE BEATRICE MILLER: Can this question
5 be divided?

6 THE PRESIDENT: I think so. Do you desire to
7 have it divided?

8 DELEGATE BEATRICE MILLER: I do, Mr. President..

9 THE PRESIDENT: After the question is divided,
10 if both parts should be divided, the Committee on Style
11 would have to rephrase it. I think that could be done.

12 The division being called for, the Chair will
13 divide the question.

14 I submit as the first question the amendment
15 embraced in the first four lines, and the second question
16 the amendment embraced in the last three lines, 5, 6 and 7.

17 Delegate Mudd.

18 DELEGATE MUDD: Mr. President, I rise to speak
19 in opposition to both parts of this amendment as divided.

20 I appreciate the spirit which apparently prompted
21 Delegate Willis to propose this amendment, and I do not

1 know that the exact restrictions of this amendment were
2 debated to any extent in the Committee of the Whole. Now
3 I wish to assure the proponent of this amendment that this
4 matter was debated at considerable length in committee, and
5 we were mindful in proposing these restrictions that in
6 some areas, at least, service on this nominating commission
7 within the restrictions set out in section 5.20 would
8 possibly deprive the state and the man shown of valuable
9 talent, but we felt in committee after considerable debate
10 and after considering and rejecting Delegate Willis'
11 suggestion the one-year prohibition rather than the two, as
12 we provided that the work of this commission was so important
13 and such an essential part of the overall method of
14 selection and tenure ultimately adopted by the majority of
15 our committee that we felt that every precaution should be
16 taken to insure this committee against any pressures, and to
17 make their responsibility one of selecting candidates
18 for the judiciary, and without anyone rewarded in any manner
19 for service on that commission.

20 We therefore after much consideration and debate
21 adopted these restrictions which we felt were necessary and

1 desirable to insure for this planned selection the
2 cautions that we deemed desirable, and I must therefore
3 urge the Convention to vote against this complete amendment,
4 both parts thereof, as it is now divided.

5 THE PRESIDENT: Any further discussion?

6 Delegate Bennett?

7 DELEGATE BENNETT: Mr. President and fellow
8 delegates: I think this is a salutary amendment. This
9 whole section, or this whole recommendation recommended by
10 the committee really strikes at the heart of getting a
11 valuable nominating committee, and to impose upon them the
12 celibacy of the kind that simply can't be enforced is not
13 a good thing for this whole plan.

14 I therefore think that this as a modification of
15 the amendment would be a very desirable amendment.

16 THE PRESIDENT: Any further discussion?

17 Are you ready for the question?

18 The Clerk will ring the quorum bell.

19 The question will arise on amendment -- it has
20 been divided. It will be submitted to you in two parts.
21 The first part will be to substitute for the words "two

1 years" in line 3 on page 7, the words "one year".

2 A vote Aye will be a vote in favor of this
3 amendment. A vote No a vote against.

4 Delegate Hardwicke.

5 DELEGATE HARDWICKE: Mr. President, I would
6 like to make one brief comment on this amendment before
7 we move.

8 THE PRESIDENT: You may.

9 DELEGATE HARDWICKE: It occurs to me that a deal
10 could very readily be made whereby a judge or a person on
11 the commission could be induced to vote for a certain person
12 for judge with the understanding that after he is not
13 on the commission the remaining members of the commission
14 would then vote for him, and it seems to me that the two-year
15 provision is extremely desirable to prevent that very thing
16 from occurring.

17 If we cut it down to one year you may find that
18 members of these commissions are going to be judges with
19 amazing frequency. The two-year provision is very desirable.

20 THE PRESIDENT: Any further discussion?

21 The question arises on the first part of amendment

9, the substitution of "one year" for the words "two years"
in line 3 on page 7.

A vote Aye is a vote in favor of the amendment.
A vote No is a vote against.

Cast your vote.

Has every delegate voted? Delegate Kosakowski,
are you having trouble again?

DELEGATE KOSAKOWSKI: I would like to vote No.
My button here only votes Aye.

THE PRESIDENT: Has every delegate voted?
Does any delegate desire to change his vote?

The Clerk will record the vote, with Delegate
Kosakowski voting No.

There being 41 votes in the affirmative, and 71 in
the negative, the motion is lost, and the amendment is
rejected. That is the first part of the question.

The question now arises on the second part of
the amendment to put a period in line 4 after the word
"commission" and strike out the remainder of that line, and
all of lines 5 and 6. This would have the effect of striking
the prohibition that a member of the commission shall not
be eligible to hold any other office of profit for one year

1 immediately following his service.

2 A vote Aye is a vote in favor of that amendment.

3 A vote No is a vote against.

4 Delegate Beatrice Miller.

5 DELEGATE BEATRICE MILLER: Mr Chairman, I asked
6 for a division of the question because I feel that there
7 are basically two different considerations here. I would
8 agree with the majority who voted that a member of the
9 commission should not become a judge, but I do not think
10 that we can or should expect a member of the commission who
11 would be a valuable and respected member of the community
12 from assuming other duties or participating in other forms
13 of government, and I would urge that we vote for this
14 amendment.

15 THE PRESIDENT: Any further discussion? Are
16 you ready for the question?

17 The question arises on the second part of
18 amendment 9 to put a period after the word "commission", in
19 line 4, delete the remainder of lines 4 and all of lines
20 5 and 6. A vote Aye is a vote in favor of this deletion,
21 and a vote No is a vote against.

1 Cast your vote.

2 Delegate Kosakowski, you may announce your vote.

3 DELEGATE KOSAKOWSKI: I would like to vote No.

4 THE PRESIDENT: Has every delegate voted?

5 Delegate James Clark.

6 DELEGATE JAMES CLARK: No.

7 THE PRESIDENT: Has every delegate voted?

8 Does any delegate desire to change his vote?

9 The Clerk will record the vote.

10 There being 47 votes in the affirmative and 66
11 in the negative -- 47 votes in the affirmative and 68
12 votes in the negative, the amendment is likewise rejected.

13 Any further amendments to section 5.20? The
14 Chair hears none.

15 Any amendments to section 5.21? The Chair hears
16 none.

17 Any amendments to section 5.22?

18 Delegate Bamberger, do you desire to offer your
19 amendment H?

20 DELEGATE BAMBLERGER: Yes.

21 THE PRESIDENT: Pages will please distribute

1 amendment H. H for Harry.

2 The Clerk will read the amendment. This will
3 be amendment No. 10.

4 MR.QUILLEN: Amendment No. 10 as amended by
5 Report No. S&D-8 to committee recommendation No. JB-1, by
6 Delegate Bamberger:

7 On page 7, Section 5.22 Judicial Term of Office,
8 in lines 33 through 41, inclusive, strike out beginning
9 with the words "The Court of" in line 33, down to and includ-
10 ing the words "of the poll." in line 41.

11 THE PRESIDENT: The amendment having been
12 submitted by Delegate Bamberger, is there a second?

13 DELEGATE BENNETT: Second.

14 THE PRESIDENT: The Chair recognizes Delegate
15 Bamberger.

16 DELEGATE BAMBERGER: This is the amendment which
17 was originally offered by Delegate Bennett. We have been
18 up this hill and down it before. The last time we had been
19 up the hill it took only one more vote to go over the top,
20 so I thought we ought to try it again.

21 The purpose of this amendment is to remove from

1 the Constitution the requirement that there shall be a
2 secret poll of the lawyers concerning the qualifications of
3 a judge who is standing for reelection, and that that poll
4 shall be published. As I remember it, the principal
5 argument which was made for this proposal was that the
6 public would like to know how lawyers felt about the judge
7 on the bench.

8 I suggest that they be told without having to
9 provide in the Constitution that kind of secret poll. My
10 concerns about that are really two. I think we always know
11 there are a fixed percentage of people who always vote
12 against things. It seems to me unfair for a judge who
13 may be a very good judge, in fact, one of his qualities
14 is that he is a strong judge, and he runs his courtroom and
15 the lawyers don't run the courtroom, and he decides cases
16 fairly, but there are some lawyers who are displeased with
17 his decisions, or with his conduct as a judge, or who just
18 don't like him, and so there is a poll and there will be, let
19 us say, at best 15 percent of the lawyers/might vote against
20 him.

21 It seems to me that is an unfair blemish to put

1 on a judge who may be a perfectly good judge.

2 Secondly, I have some concern with the kind of
3 pressure hidden, insidious, pressure that this may put on
4 the judge who is sitting in the courtroom every day hearing
5 the pleas of lawyers and always displeasing one of them when
6 he makes a decision, but always knowing that they are
7 going to have a little poll at the end of the week, that it is
8 going to be secret, and they are going to have an opportunity
9 to vote whether they should recommend his continuance in
10 office or not.

11 This doesn't avoid that happening. The bar can
12 have its poll. It has in the past enlisted the support
13 of lawyers for judges who are on the bench. I think
14 you have all seen the ad published in the papers just
15 before the elections which list lawyers who support a
16 particular judge. Any lawyers who oppose him can do the
17 same thing if they wish. They can conduct a secret poll at the
18 bar association if they want to. I don't see why this has
19 to be in the Constitution.

20 I think it does have these ills that I point out,
21 and I urge you to adopt the amendment.

1 THE PRESIDENT: Are ~~there~~ any questions of
2 the sponsor of the amendment?

3 There are none.

4 Delegate Mudd.

5 DELEGATE MUDD: Mr. President, Delegate
6 Bamberger is entirely c orrect that we have been up and
7 down the hill in this portion of section 5.22, and the
8 matter was debated at some length by the Committee of the
9 Whole, and perhaps this part of section 5.22 has been
10 debated in the corridors and privately more than any
11 other section of the judicial article.

12 Obviously there are objections and persuasive
13 suggestions or provisions for this poll, and it may be said
14 that it is not of constitutional stature. It may be you will
15 recall that the matter was included in the draft referred
16 to our committee as a permissive procedure.

17 We debated that aspect of the matter at some
18 length in committee, and concluded that a permissive poll
19 which might be taken in some instances and not in others
20 could be more difficult and more harmful than no poll, or
21 the situation that we are now trying to take care of by making

1 it mandatory.

2 I say again as I think I said when this matter
3 was debated before, that I feel that the lawyers as
4 members of the bar and officers of the court have some
5 obligation with respect to the ability and acceptability
6 of a sitting judge.

7 Obviously some lawyers will dislike expressing
8 their views even by a secret ballot, and obviously some
9 judges will dislike the idea of this poll, but it was a
10 view of the majority of our committee that the poll if it
11 was to be provided for should be mandatory in all instances,
12 and under the running against the record procedure which
13 we have adopted for the selection and retention of judges
14 that ~~those~~ who were interested were entitled to know, the
15 lawyers' evaluation of a candidate for judge, and if that
16 is true then certainly lawyers as officers of the court have
17 an obligation to carry through.

18 I therefore oppose this amendment and urge the
19 delegates to vote against it.

20 THE PRESIDENT: Delegate Wheatley.

21 DELEGATE WHEATLEY: Mr. President, and ladies

1 and gentlemen of the convention, I went up the hill with
2 Delegate Mudd, and now I would like to come down the hill
3 with Delegate Bamberger, and the way the load has been
4 going lately I would suggest that Delegate Bamberger will be
5 over the hill. I did vote for it when it was first written.
6 Then on more mature reflection I feel it is something that
7 should come out for basically two reasons. Even though I
8 am opposed to the system as proposed by this article,
9 nevertheless if it is adopted, judges should not be
10 subjected to pressures from attorneys any more than politicians
11 and for that reason I first stated I would be in favor of
12 the amendment.

13 More important, it creates a special class of
14 voters by establishing attorneys as those who vote twice,
15 and we would have mini-elections. I don't think we should
16 provide for this kind of thing in the Constitution.
17 Therefore I urge that this amendment be passed to get back
18 to the concept of brevity that we espouse so often, and
19 if the attorneys of this state want to take a poll, I am
20 sure they have the integrity to conduct such a poll. If
21 they do not, I can't see us mandating such a poll.

1 THE PRESIDENT: Delegate Rosenstock.

2 DELEGATE ROSENSTOCK: Mr. President and fellow
3 delegates: This is the heart of the judicial selection.
4 The only people I have found, and I have talked about this
5 section with a great many lawyers, non-lawyers, and judges,
6 the only opposition is among certain judges, and that makes
7 me feel all the more that we are right in asking that we have
8 this poll of lawyers to express whether a judge should be
9 retained, or not retained in office.

10 THE PRESIDENT: Delegate Jett.

11 DELEGATE JETT: Mr. President, I feel in the
12 strongest terms that we are obliged as lawyers to vote this
13 proposal down, we constitute a large majority of this
14 convention. We have an article in here that has taken up a
15 lot of time of this convention. We have insulated our
16 judges so that they are almost impervious to public pressures,
17 and we are saying that they run on the record. What is
18 the record, and who knows the record, and who could know
19 it any better than the lawyers?

20 I say it is an aspersion on the lawyers as a
21 profession to say that they will vote wrongly about this

1 thing. Every lawyer who goes into court knows that one side
2 will win and one side is going to lose, and he knows a good
3 judge and a bad judge.

4 I think the public is entitled to know what the
5 lawyers feel about that judge. I think that we can't shirk
6 this responsibility. If we will have judges who will
7 represent the people who will clearly decide cases before
8 them, then the public is entitled to know how those judges
9 operate, and what the lawyers who appear before them every
10 day feel about their ability.

11 I feel it is our obligation, particularly as
12 lawyers, to insist that this poll be taken, and the public
13 given the benefits of it. I hope you will vote down
14 Delegate Bamberger's amendment.

15 THE PRESIDENT: Delegate Dukes.

16 DELEGATE DUKES: It is obviously with considerable
17 reflection that I rise to oppose a small-town lawyer,
18 Delegate Mudd, and decide with big-city lawyer Delegate
19 Bamberger.

20 In the first, second and third grades we elected
21 class officers, and everybody put their heads down and

1 closed their eyes and voted. I would have no intention of
2 of voting for a secret election. I would relish the
3 opportunity to tell the judges what I think about them.
4 I would be happy to do it in public. If you want the
5 public to know what they think of judges, let the lawyers
6 step up and say what they think. Don't do it secretly.

7 The main thing I enjoy when I go to the courtroom
8 is that Judge Dorsey may think I am a stupid idiot, and
9 he may tell me so, and he may also tell my opponent.

10 I ask that a judge have no fear of the public or
11 lawyers; that he have no fear from any human being on the
12 face of the earth. I have no desire to vote in secret what
13 I think about him.

14 THE PRESIDENT: Delegate Hanson.

15 DELEGATE HANSON: I rise to support the amendment
16 offered by Delegate Bamberger, and to first of all say
17 I am in full agreement with the arguments that have been
18 made.

19 I think there are a couple of others which perhaps
20 the delegates ought to be reminded of. I think there is a
21 very basic problem in polling, whether you are polling

1 lawyers or anybody else, and this is first of all in
2 deciding who you poll.

3 In this case the Constitution would say the lawyers
4 in the area. Well, now, there you get into a fairly
5 large universe in some instances.

6 Delegate Jett says the lawyers who appear all the
7 time before these judges know them, but I would submit that
8 the larger portion of the lawyers in the area do not
9 appear all of the time, or even with frequency, before the
10 judges, and consequently they know no more about them than
11 I would know as a lawyer about the performance of those
12 judges on the bench.

13 Why should jurors who sit before the judge for
14 sometimes weeks or months at a time not be polled about
15 what they think of the performance of the judge? Certainly
16 they have seen him perform. They are able to reflect on
17 that performance. They should be able to make a judgment
18 and to advise us on whether or not this judge is a good
19 judge, and a fair judge, a compassionate judge, a learned
20 judge, a lucid judge, a sober judge. These are things that
21 we would need to know in making our selection of a judge

1 or deciding whether or not to retain a judge, but no, we
2 w--ld not poll the jurors who have sat before this judge.
3 We would poll only the attorneys who have tried cases before
4 the judge, or who are directly familiar with his decisions.

5 No, we would poll all the attorneys in the area.
6 Would we poll those who are members of the bar, and have
7 practiced before that court of which the judge is a
8 memb er? No, we would poll all.

9 It seems to me, if hearsay is a bad rule in
10 court it is also a bad rule in polling, and I think that
11 this is just basically ill-advised as public policy, and
12 especially it is ill-advised as a constitutional requirement
13 because, if we find as I think we will that in practice
14 it doesn't work very well, we then will have to go to a
15 constitutional amendment to remove the requirement, and I
16 think we should allow the courts or allow the bar associations
17 the latitude of skillfully doing this all by themselves
18 without any necessity of taking it to constitutional
19 amendment.

20 THE PRESIDENT: Delegate Bennett.

21 DELEGATE BENNETT: Just one brief word, Mr.

1 President..

2 The most powerful argument against this whole
3 method of selecting judges is that it substitutes bar
4 politics for the present method of selecting judges.
5 I say to you here that is bar politics par excellence, and
6 if you leave this thing in the Constitution I am sure
7 it will endanger the whole article.

8 THE PRESIDENT: Delegate Mason.

9 DELEGATE MASON: Mr. President, I move the
10 previous question.

11 THE PRESIDENT: Is there a second?

12 (The motion was duly seconded)

13 THE PRESIDENT: Not debateable- All in favor
14 signify by saying Aye. Contrary No. The Ayes have it,
15 and it is so ordered.

16 The question arises on the adoption of amendment
17 10. The Clerk will ring the quorum bell. A vote Aye is
18 a vote in favor of the amendment. A vote No is a vote
19 against.

20 Cast your votes.

21 Delegate Kosakowski.

1 DELEGATE KOSAKOWSKI: I want to be recorded
2 as voting No.

3 THE PRESIDENT: Delegate Kosakowski will be
4 recorded as voting No.

5 Delegate James C lark.

6 DELEGATE JAMES CLARK: Aye.

7 THE PRESIDENT: Delegate James Clark votes Aye.
8 Has every delegate voted? Does any delegate
9 desire to change his vote?

10 The Clerk will record the vote.

11 There being 46 votes in the affirmative, and
12 68 in the negative, the motion is lost. The amendment
13 is rejected.

14 Delegate Bamberger, do you desire to offer your
15 amendment G?

16 DELEGATE BAMBERGER: Yes, and I immediately move
17 the previous question.

18 THE PRESID ENT: Pages will please distribute
19 the amendment G that is G for George. Amendment 11.

20 The Clerk will read the amendment..

21 MR. QUILLEN: Amendment No. 11 to committee

1 recommendation JB-1, as amended by Report No. S&D-8.

2 On page 7, section 5.22, Judicial Term of Office,
3 in line 34 strike out the word "shall" and insert in lieu
4 thereof the word: "may".

5 THE PRESIDENT: Is there a second?

6 DELEGATE HARDWICKE: Second.

7 THE PRESIDENT : The amendment having been
8 seconded, the Chair recognizes Delegate Bamberger.

9 DELEGATE BAMBERGER: The purpose of this
10 amendment is so change the word "shall" to "may" so
11 that the poll is not mandatory, and if we find that
12 in some jurisdiction or in every jurisdiction that this
13 procedure has not worked, then the Court of Appeals could
14 have the power to decide when there would or would not
15 be a poll of the lawyers. Everything has been said about
16 it. I offered the amendment because there were some
17 delegates who expressed a feeling that they would find it
18 more palatable if it were not mandatory, but if it was
19 something we could experiment with rather than be saddled
20 with regardless of the result.

21 I move the previous question.

1 THE PRESIDENT: You don't have the privilege
2 of moving the previous question, Delegate Bamberger.

3 The Chair recognizes Delegate Mudd.

4 DELEGATE MUDD: Mr. President, I think I
5 discussed this phase of the matter in speaking in opposition
6 to the previous amendment.

7 This section, as originally suggested by the Study
8 Commission, did include the word "may" rather than "shall".
9 That phase of the matter was discussed in length at our
10 committee, and I believe the same amendment was proposed
11 by the Committee of the Whole. It does have some merit.

12 As Delegate Bamberger has indicated, if the
13 plan is found to be inoperable and it could be abandoned
14 without a constitutional amendment, but we feel it has
15 some danger because the poll could be taken in some instances
16 and not in others.

17 We feel that would be more difficult than the
18 mandatory provision as included in our recommendation, and
19 we therefore oppose the amendment.

20 THE PRESIDENT: Are you ready for the question?

21 The Clerk will ring the quorum bell.

1 The question arises on the adoption of
2 amendment No. 11; a vote Aye is a vote in favor of the
3 amendment. A vote No is a vote against the amendment.

4 Cast your vote.

5 Has every delegate voted? Does any delegate desire
6 to change his vote?

7 Delegate James Clark.

8 DELEGATE JAMES CLARK: Delegate James Clark votes
9 No.

10 THE PRESIDENT: The Clerk will record the vote.

11 Delegate Kosakowski.

12 DELEGATE KOSAKOWSKI: I notice that my red
13 button went out again.

14 THE PRESIDENT: Just a minute. Is Delegate
15 Kosakowski recorded as voting No?

16 MR. QUILLEN: Yes.

17 THE PRESIDENT: There being 35 votes in the
18 affirmative and 80 in the negative, the amendment is lost
19 and the amendment is rejected.

20 Any other amendments to section 5.22? The Chair
21 hears none.

1 I'm sorry. You have an amendment O, Delegate
2 Willis. Do you desire to offer it.

3 DELEGATE WILLIS: Yes, please.

4 THE PRESIDENT: Will the pages please distribute
5 amendment O?

6 The Clerk will read the amendment.

7 MR. QUILLEN: Amendment No. 12 to committee
8 recommendation JB-1, by Delegates Willis and Stern:

9 On page 7, section 5.22, Judicial Term of Office,
10 in line 22 strike out the words "his appointment" and
11 insert in lieu thereof the following: "the occurrence of the
12 vacancy to which he was appointed".

13 THE PRESIDENT: The amendment having been
14 ~~submitted~~ by Delegate Willis, is seconded by Delegate Stern.

15 The Chair recognizes Delegate Willis.

16 DELEGATE WILLIS: A very short explanation,
17 Mr. President. The language of this report, section 5.22,
18 indicates that a judge after he is appointed would be up
19 for the next general election following the expiration of
20 two years from the date of his appointment. The language
21 in the present Constitution deals with one year, but says

1 after the occurrence of the vacancy.

2 Now, there is quite a difference here. To be
3 specific, and to give an example, a vacancy could occur
4 around the middle of September. If the Governor did
5 not wish to make an appointment until the middle of
6 November, then that judge would not be up for election
7 before the people for four years.

8 As I read this, I think that is quite a
9 while to give him to serve before the people have a chance
10 to vote on his qualifications.

11 THE PRESIDENT: Any questions of the sponsor?
12 The Chair hears none.

13 Delegate Mudd:

14 DELEGATE MUDD: May I ask Delegate Willis how he
15 computed the possibility of no election for four years?

1 DELEGATE WILLIS: As I understand this, it says
 2 here that the continuance in office of each judge shall be
 3 subject to approval or rejection at the next general election
 4 following the expiration of two years from the date of his
 5 appointment and his appointment could be delayed 30 days
 6 after the vacancy occurs, or as much as 60 days after the
 7 vacancy occurs.

8 Suppose the vacancy occurs on September 15. Sixty
 9 days later would be November 15. The general election would
 10 be over but two years from that date the general election could
 11 take place before November 15 but he would not have been in
 12 office the full two years so therefore he would not be on
 13 for another two years, and that is my reasoning. If I am
 14 wrong I will stand corrected.

15 THE PRESIDENT: Delegate Mudd, I think that
 16 Delegate Willis's point could be even more sharply
 17 illustrated if the vacancy occurred by reason of the expira-
 18 tion of the term and if that coincided with the election and
 19 if the appointment were one day after, the next election
 20 following two years thereafter could make it four years
 21 lacking one day.

1 DELEGATE MUDD: I think I follow, Mr. President
2 and Delegate Willis. The thought of our Committee, as I
3 recollect it, in using the word "appointment" rather than
4 "the occurrence of the vacancy" was not designed to prolong
5 the appointive period to the extent that it has been
6 illustrated. It was the thought of our Committee that an
7 appointed judge should have an opportunity to serve for these
8 two years in order to demonstrate his qualifications or lack
9 of qualifications for the bench, and we did knowingly increase
10 the provision from one year in the present law, as I under-
11 stand it, to two years with the idea that this minimum two-
12 year period was a reasonable probationary period for want
13 of a better word.

14 As we worked the thing out mathematically in the
15 Committee -- and that was one reason why we cosponsored the
16 amendment of the Suffrage and Election law dealing with the
17 election of state officials -- it was our conclusion, as I
18 recollect it, that under this provision the maximum period a
19 judge could sit on any appointment at any time prior to
20 election would be two years and eleven months, but if we came
21 to a wrong conclusion in that respect, I stand corrected, but

1 we feel, of course, that the illustration given is extremely
2 remote that the Governor in exercising his appointive power
3 would have to cooperate with the appointee and a lot of other
4 things would have to occur coincidentally to accomplish that
5 long a probationary period.

6 We think Section 5.22 as proposed by the Com-
7 mittee is practical and does accomplish the intention of the
8 Committee, and we therefore oppose the amendment.

9 THE PRESIDENT: I thought when I made my comment
10 that I recalled at the time of the presentation of your re-
11 port the Committee took the position that the time that an
12 appointed judge would be appointed would be not less than
13 two and not more than four. Apparently I was wrong if what
14 you just said is correct. I take it that would be the effect
15 of the section as drafted by the Committee. The period of
16 time would be not less than two or more than four years lack-
17 ing one day I suppose would be accurate, is that correct?

18 DELEGATE MUDD: I stand corrected, Mr. President,
19 and you and Delegate Willis have explained that possibility
20 does exist, and I may be in error, but we thought the
21 approximate appointive term might be two years and three

1 months.

2 THE PRESIDENT: But there is no question that it
3 is not more than four years minus a day?

4 DELEGATE MUDD: That is correct.

5 THE PRESIDENT: Any further discussion.

6 Delegate Dorsey.

7 DELEGATE CARSON: I rise to support the amendment.
8 I think it is a salutary one. You will find that the re-
9 quirement is that the Nominating Commission make its nomina-
10 tions within 60 days and that thereafter the Governor act
11 within 60 days, therefore 120 days could elapse after the
12 vacancy until a new judge is appointed. You subtract 120 days
13 from two years, which is the minimum time a judge could
14 serve.

15 Under the amendment a judge would have to serve
16 at least one and two-thirds years prior to his approval or
17 rejection. I think that is an adequate time.

18 I think the amendment is a salutary one and urge
19 your support in favor of it.

20 THE PRESIDENT: Are you ready for the question?
21 The Clerk will ring the quorum bell.

1 The question arises on the adoption of Amendment
2 12. A vote "aye" is a vote in favor of the amendment. A
3 vote "no" is a vote against.

4 Cast your vote.

5 (Whereupon, a rollicall vote was taken.)

6 **THE PRESIDENT:** Delegate James Clark.

7 **DELEGATE CLARK:** Aye.

8 **THE PRESIDENT:** Delegate James Clark votes "aye."

9 Has every delegate voted? Does any delegate
10 desire to change his vote?

11 The Clerk will record the vote.

12 There being 81 votes in the affirmative and 26
13 in the negative, the motion is carried and the amendment is
14 adopted.

15 I am sorry, 82 votes in the affirmative and 26
16 in the negative. The amendment is adopted.

17 Are there any other amendments to Section 5.22?
18 The Chair hears none.

19 Any amendments to Section 5.23? The Chair hears
20 none.

21 Any amendments to Section 5.24? The Chair hears

1 none.

2 Any amendments to Section 5.25? The Chair hears
3 none.

4 Delegate Harkness, do you desire to offer the
5 Amendment P?

6 DELEGATE HARKNESS: Yes.

7 THE PRESIDENT: Pages please distribute the
8 Amendment P for Paul. The Clerk will read the amendment.

9 MR. QUILLEN: "Amendment No. 13 to Committee
10 Recommendation JB-1 as amended by Report No. S&D-8 to
11 Committee Recommendation No. JB-1 by Delegates Johnson,
12 Harkness, E.C. Murray, Jett.

13 "On page 8 Section 5.25 Restriction of Non-Judicial
14 Activities in line 33 after the word "campaign" add the
15 following words:

16 "or serve as officer, director or employee of any
17 business formed with the intention of making a profit".

18 THE PRESIDENT: The amendment having been submitted
19 by Delegate Harkness and seconded by Delegates Johnson, E.C.
20 Murray, and Jett, the Chair recognizes Delegate Harkness.

21 DELEGATE HARKNESS: Mr. Chairman and fellow

1 delegates: I know the hour has drawn late and I hate to ask
2 you to stay a little later to give serious consideration to
3 the question.

4 There is no restriction on a judge sitting at a
5 substantial salary which we know will be fixed by the General
6 Assembly. He will be insulated by his appointment for life
7 under the present system we have adopted. There is nothing
8 in this Constitution that prevents him from walking across
9 the street and accepting the \$25,000 position as president
10 of the bank in that town.

11 Now, this matter came up in committee and it was
12 decided that this was a matter of judicial canon of ethics,
13 but I ask you who determines what the canon of ethics is for
14 the judges other than the judges themselves?

15 I will cite you -- and what I am citing you is not
16 fiction. I will not mention names. I can give you names.
17 I can give you dates et cetera where there was a judge still
18 a member of the bench and who had some six months to serve
19 who accepted a position as a president of a new bank being
20 organized, and he actively went out and solicited depositors
21 for that bank still receiving a salary as judge, and when I

1 went to the judge with some hesitancy -- and I am sure that
2 my visit wasn't appreciated -- but anyway I felt as a member
3 of the bar and also as a director of a competing bank I had
4 the right to know.

5 (Laughter.)

6 DELEGATE HARKNESS: He agreed when I confronted
7 him with the fact that it was probably unethical. His
8 answer was, "I considered it, and then I asked a judge of the
9 Court of Appeals whether I should do it," and that judge of
10 the Court of Appeals told him to go ahead and do it.

11 Now, you talk about a judicial canon of ethics,
12 but who are they administered by?

13 There was a provision in the old Constitution. If
14 they didn't heed it in the old Constitution, I think we ought
15 to put a stronger one in the new Constitution.

16 If we are going to pay them a substantial salary
17 and we are going to give them a job for life, I suspect if
18 you look around the State there are too many judges serving
19 on banks and building and loan associations.

20 I earnestly ask that you adopt this amendment.

21 THE PRESIDENT: Delegate Mudd.

1 DELEGATE MUDD: Mr. President, my good friend Dave
2 Harkness makes two suggestions, as I get it from his argu-
3 ment. Number one is that the resolution in the present
4 Constitution didn't work so let us hope this one works. He
5 may be advocating some protection for lawyers from judges in
6 the banking business, and I don't know whether we should
7 enshrine that in the Constitution. We did debate this subject
8 in committee, and there, of course, is some persuasive
9 argument that can be made in support of the amendment, but,
10 after all, we are dealing with judges, and we do have a
11 Board of Judicial Ethics, and I think the instance that
12 Delegate Harkness has cited may be one to which he happened
13 to be exposed, and I do not think provision is necessary --
14 it is unnecessary, and we therefore ask you to vote against
15 the amendment.

16 THE PRESIDENT: Delegate Churchill Murray.

17 DELEGATE CHURCHILL MURRAY: Mr. President and
18 ladies and gentlemen: Many of us have seen this abuse. Many
19 of us certainly in the smaller towns have seen this abuse.
20 Many a judge serves as a useful citizen on a nonpaid charitable
21 board and is extremely valuable, but when he goes on a

1 board that is paid--it seems to be more often a bank board
2 than others -- I think it is improper.

3 You talk a lot about what he shall do after he
4 retires. I don't give a hang what he does after he retires
5 but while he is on the bench I think he owes his entire
6 allegiance to the bench.

7 THE PRESIDENT: Any other discussion?

8 Delegate Marvin Smith.

9 DELEGATE MARVIN SMITH: Mr. Chairman, we can't
10 expect to write in the Constitution all of the canons of
11 judicial ethics. With all due respect to my brother Harkness,
12 he knows well enough that the canons of judicial ethics are
13 not written by the judges. We did have a situation in
14 Maryland in which there was a judge or two -- there was one
15 in my area who was a director of a bank, of a national bank
16 not in our town. That particular judge is the soul of
17 integrity in every sense of the word, and when the Committee
18 on Ethics of the Bar Association rendered an opinion based
19 on the canons of judicial ethics, that judge very promptly
20 resigned from the board of that bank.

21 Now, never before have we had the provisions for

1 disciplining judges that are written into this Constitution.
2 Now, if the conduct of the judge is such as to prejudice the
3 proper administration of justice and so forth, we would have
4 provision now for removing him from office. I don't think,
5 however, that this is a provision that should be written
6 into the Constitution.

7 THE PRESIDENT: Any further discussion.

8 Delegate Pullen.

9 DELEGATE PULLEN: Mr. Chairman, one of my good
10 lawyer friends of many years standing paraphrased Talleyrand
11 when he said that "Education was too important to be left
12 to the educators." I should like to paraphrase my friend
13 Jett tonight in saying that after today I have come to my
14 conclusion that justice and the judiciary are too important
15 to be left to the lawyers. (laughter.)

16 THE PRESIDENT: Delegate Grumbacher.

17 DELEGATE GRUMBACHER: Mr. President, the most
18 important point of this is that this applies to sitting
19 judges, not to the retired judge. The retired judge should
20 do as he sees fit while sitting. I think that this could
21 influence him too greatly.

1 THE PRESIDENT: Are you ready for the question?

2 The Clerk will ring the quorum bell.

3 The question arises on the adoption of Amendment

4 No. 13. A vote "aye" is a vote in favor of the amendment.

5 A vote "no" is a vote against. Cast your vote.

6 (Whereupon, a rollcall vote was taken.)

7 THE PRESIDENT: Has every delegate voted?

8 Delegate James Clark.

9 DELEGATE CLARK: Aye.

10 THE PRESIDENT: Has every delegate voted? Does
11 any delegate desire to change his vote?

12 The Clerk will record the vote. Delegate James
13 Clark votes "aye."

14 There being 69 votes in the affirmative and 37 in
15 the negative, the amendment is adopted.

16 Any further amendments to Section 5.25?

17 Any amendments to Section 5.26? The Chair hears
18 none.

19 Any amendments to Section 5.27? The Chair hears
20 none.

21 Any amendments to 5.28? The Chair hears none.

1 Any amendments to Section 5.29? The Chair hears
2 none.

3 Section 5.30? The Chair hears none.

4 Any amendments to Section 5.31? The Chair hears
5 none.

6 Any amendments to Section 5.32? The Chair hears
7 none.

8 The question now arises on the adoption of second
9 reading of Committee Recommendation JB-1 as amended. The
10 Clerk will ring the quorum bell.

11 Delegate Johnson.

12 DELEGATE JOHNSON: Mr. President, because of the
13 possible confusion that may or may not reign with respect to
14 the colloquy between the Chair, Delegate Mudd, and myself
15 and Delegate Penniman, I wonder if I could ask another
16 question on that same subject matter before we take the vote.

17 THE PRESIDENT: Very well.

18 DELEGATE JOHNSON: I would ask it to Delegate
19 Mudd.

20 THE PRESIDENT: Very well.

21 Delegate Mudd, would you take the floor to yield

1 to a question?

2 DELEGATE MUDD: Yes, Mr. President.

3 THE PRESIDENT: Delegate Johnson.

4 DELEGATE JOHNSON: Delegate Mudd, with respect to
5 the judicial article, JB-1, now excluding only Section 5.03
6 for the ~~moment~~, excluding that section only, am I not
7 correct in stating that wherever the term appears in JB-1 in
8 the judicial article as prescribed by law, "as prescribed
9 by law," that that means that the Legislature has exclusive
10 power?

11 THE PRESIDENT: Delegate Johnson, would you permit
12 the Chair to rephrase your question? I think that Delegate
13 Mudd could answer it more quickly. I assume you mean with
14 the exception of Section 5.03, does the expression where
15 elsewhere used in Article 5 "prescribed by law" mean
16 prescribed by the General Assembly law? Is that your
17 question?

18 DELEGATE JOHNSON: Yes, sir.

19 THE PRESIDENT: Delegate Mudd?

20 DELEGATE MUDD: Yes, Mr. President, I concur.

21 THE PRESIDENT: Any further questions?

1 The question arises on the adoption at second
2 reading of the committee -- Delegate Carson?

3 DELEGATE CARSON: Mr. Chairman, I realize it is
4 late, and I would like to vote on it also, but the Amendment
5 No. 13 we just passed, I would like to offer an amendment to
6 it if it would lie at this time to strike out the words
7 "business formed with the intention of making a profit" and
8 to substitute therefor the words "noncharitable enterprise".

9 THE PRESIDENT: Is there any objection to con-
10 sidering an amendment to Section 5.25 as amended by Amendment
11 13 notwithstanding the fact that the amendment is not
12 printed?

13 Delegate Wheatley.

14 DELEGATE WHEATLEY: I have a question if the
15 sponsor will yield.

16 THE PRESIDENT: Do you object to the question?

17 DELEGATE CARSON: I am not sure until I get an
18 answer to my question.

19 THE PRESIDENT: Delegate Carson, do you yield to
20 a question?

21 DELEGATE CARSON: I do.

1 THE PRESIDENT: Delegate Wheatley.

2 DELEGATE WHEATLEY: I assume the intention of
3 your suggested amendment would be to preclude the narrow
4 interpretation of the language you intend to strike out and
5 thereby further deny compensation, is that correct?

6 THE PRESIDENT: Delegate Carson.

7 DELEGATE CARSON: I do. The intention of the
8 amendment is two-fold. There are certain enterprises
9 originally formed with the intention of making a profit that
10 later are turned into charitable enterprises. There are
11 some charitable enterprises which exist to make a profit
12 although a charitable one. I would have no objection to the
13 Style Committee changing the words as long as they kept my
14 meaning.

15 THE PRESIDENT: Delegate Wheatley.

16 DELEGATE WHEATLEY: Isn't it true that a non-
17 profitable or a charitable institution could pay salaries to
18 a judge?

19 DELEGATE CARSON: I think it is possible. I do
20 not think it would be inappropriate, and I do not think there
21 is any great fear of that.

1 DELEGATE WHEATLEY: Would you yield to an amend-
2 ment which would say "or serve in any position of profit-
3 making" or something to that effect, or for a profit-making
4 position rather than limiting it to a charitable institution
5 which I think would be another loophole?

6 THE PRESIDENT: Delegate Carson?

7 DELEGATE CARSON: Delegate Wheatley, I would have
8 no objection to that. I don't know how you would frame it
9 in language.

10 THE PRESIDENT: Delegate Wheatley.

11 DELEGATE WHEATLEY: May I suggest that after the
12 words "of any business for which he shall receive compensa-
13 tion."

14 THE PRESIDENT: **Delegate Carson**, may the Chair
15 suggest the language to you, not that I advocate it but to
16 suggest something for your consideration.

17 DELEGATE CARSON: Yes, sir.

18 THE PRESIDENT: I take it that your primary motive
19 here is to prevent the judge from receiving compensation for
20 some nonjudicial activity regardless of the character of the
21 enterprise from which he receives compensation.

1 DELEGATE CARSON: That was the intention of the
2 amendment, yes.

3 THE PRESIDENT: Could you accomplish that purpose
4 by inserting after the word "served" "for compensation" and
5 strike out everything beginning with the word "business" and
6 insert in lieu of all the word "enterprise" so that it would
7 read "to serve for compensation as officer, director, or
8 employee of any enterprise."

9 DELEGATE CARSON: No, that does not do what I
10 desire to do because then he could serve for a bank or for
11 a savings and loan gratuitously, and that is not what the
12 sponsors of the amendment wanted. I will stick to the first
13 words I used.

14 THE PRESIDENT: Do you object to consideration of
15 the amendment?

16 DELEGATE WHEATLEY: No.

17 THE PRESIDENT: Delegate Churchill Murray, for
18 what purpose do you rise?

19 DELEGATE CHURCHILL MURRAY: To comment on this,
20 sir. I have no objection to that either.

21 THE PRESIDENT: Let me get the amendment before

1 us, sir.

2 Delegate Murray?

3 DELEGATE CHURCHILL MURRAY: I had in mind,
4 however, that in place of "with the intention of making a
5 profit", it could be "operating for a profit", but this was
6 immaterial to me. I will gladly accept it.

7 THE PRESIDENT: Delegate Carson, did you get the
8 suggestion? It was that you delete the words "formed with
9 the intention of making" and insert in lieu thereof "operated
10 for the purpose of". You would delete the "formed with the
11 intention" and insert "operated for the purpose".

12 DELEGATE CARSON: Mr. Chairman, that is better than
13 what they have. Still there are some charitable organiza-
14 tions that are operated for a profit although charitably,
15 and I think there is still very restrictive.

16 THE PRESIDENT: There is no objection to
17 considering as Amendment 14 to Section 5.25 as amended by
18 Amendment 13. Would you give me the language again Delegate
19 Carson, please.

20 DELEGATE CARSON: I am going to stick with the
21 original language "of any noncharitable enterprise" striking

1 all the words from "business" thereafter.

2 THE PRESIDENT: All right. The amendment would
3 be to amend Section 5.25 as amended by Amendment 13 by
4 striking from the language added by Amendment 13 the words
5 in lines 6 and 7 "business formed with the intention of
6 making a profit" and inserting in lieu thereof "noncharitable
7 enterprise".

8 Is there a second to the amendment?

9 DELEGATE BENNETT: Second.

10 THE PRESIDENT: For what purpose does Delegate
11 Gill rise?

12 DELEGATE GILL: I would like to ask a question of
13 Delegate Harkness.

14 THE PRESIDENT: Let me give the floor to Delegate
15 Carson first to speak to this amendment and then I will
16 recognize you.

17 Delegate Carson?

18 DELEGATE CARSON: Mr. Chairman and ladies and
19 gentlemen, the words "noncharitable enterprise" are
20 susceptible to clear meaning. They are used every day
21 especially by the Internal Revenue Service in their

1 regulations. This amendment would mean that the judge would
2 be precluded from serving on the board of any enterprise
3 which was not charitable in nature. There has been raised
4 the possibility that a charitable enterprise could be likely
5 to pay a salary. It might pay an amount in lieu of travel
6 expenses. Generally speaking, the charitable organizations
7 who register with the Internal Revenue Service as charitable
8 organizations do not pay substantial salaries. At best a token
9 or modicum is paid. In most cases not much is paid. I think
10 this would be better language, therefore I propose it.

11 THE PRESIDENT: Any questions of the sponsor?

12 Delegate Mudd?

13 DELEGATE MUDD: Mr. President, I am a little bit
14 lost with this amendment to the amendment and I do not know
15 whether the language proposed by Delegate Carson is more
16 restrictive than that adopted in Amendment 13 or less
17 restricted by it. I have problems with the noncharitable
18 enterprises even under the Internal Revenue qualifications.
19 My experience is that some of them pay rather handsome
20 salaries so I don't know what is being accomplished by this
21 amendment.

1 THE PRESIDENT: Delegate Dukes.

2 DELEGATE DUKES: Delegate Carson, you have placed
3 the noncharitable term in the context of the Internal
4 Revenue. Do you intend it to include scientific, educational
5 and so forth or will you be restricted to charitable as
6 defined by the Internal Revenue which is quite limited?

7 DELEGATE CARSON: It would be up to the court as
8 to what it would mean. It would be my opinion that the court
9 would follow the definition pretty much as the Internal
10 Revenue Service has made it. My amendment was made in that
11 light. I think the court probably would construe it along
12 those lines. It might be broad enough to include education
13 or scientific ventures if they were charitable in nature.

14 DELEGATE DUKES: What I am asking is your in-
15 tention. Do you intend to restrict it to those institutions
16 which would be charitable as distinguished from educational
17 or scientific?

18 THE PRESIDENT: Delegate Carson.

19 DELEGATE CARSON: I do not intend it to have a
20 broad enough range to include an educational or scientific
21 enterprise if it were charitable.

1 THE PRESIDENT: Delegate Harkness, do you have
2 any comment?

3 DELEGATE HARKNESS: I have no comment.

4 THE PRESIDENT: Will you take the floor to yield
5 to a question by Delegate Gill?

6 DELEGATE HARKNESS: Yes.

7 DELEGATE GILL: It seems to me his amendment
8 struck at one thing which was to try to prevent judges from
9 serving on boards of banks and savings and loans and making
10 a profit or in some other kind of business but that the
11 amendment that Delegate Carson proposes is just as legitimate,
12 but it strikes at another thing, but if we substitute his
13 amendment for Delegate Harkness's then Delegate Harkness has
14 lost it completely.

15 THE PRESIDENT: Delegate Harkness.

16 DELEGATE HARKNESS: I don't quite think so. I
17 think a thrust at my intention of the amendment was to
18 prevent a sitting judge from serving as a president or
19 director of a bank or building and loan association. Now, as
20 I read Delegate Carson's amendment he could serve -- he could
21 not serve as an officer, director, or employee of any

1 noncharitable enterprise which would embrace the same
2 category that I had in mind as to banks and savings and loan
3 associations.

4 Personally I prefer my amendment, but I don't have
5 any strong feeling about it.

6 THE PRESIDENT: Delegate Gill.

7 DELEGATE GILL: Would his amendment substitute
8 for Delegate Harkness's?

9 THE PRESIDENT: No, Delegate Harkness's amendment
10 has been adopted. You now have a further amendment before
11 you. It does not mean that Delegate Harkness's amendment,
12 even though adopted, cannot be changed. Delegate Harkness's
13 amendment would change it. It is not a substitute. You
14 wouldn't be voting twice. You have already adopted Delegate
15 Harkness's amendment. Delegate Carson's amendment seems to
16 change it. If his amendment is carried, then Delegate
17 Harkness's amendment has been changed.

18 Delegate Gill.

19 DELEGATE GILL: Delegate Harkness's amendment has
20 been changed. If Delegate Carson's amendment is accepted
21 then Delegate Harkness no longer has an amendment.

1 THE PRESIDENT: Yes, sir, he has an amendment
2 which has been modified. It has not been withdrawn. It has
3 not been substituted. Nothing else has been substituted for
4 it. It has been amended.

5 Delegate Gill.

6 DELEGATE GILL: Even though you change the word
7 of what is replacing the other, the fact is he is not getting
8 rid of a judge who is going to serve on a bank or on a
9 savings and loan.

10 THE PRESIDENT: He thinks he is. He disagrees with
11 you about that.

12 DELEGATE GILLS: He thinks he is.

13 THE PRESIDENT: Delegate Henderson.

14 DELEGATE HENDERSON: I have a question of
15 Delegate Carson.

16 THE PRESIDENT: Delegate Carson, will you take
17 the floor to yield to a question?

18 DELEGATE CARSON: Yes, sir.

19 THE PRESIDENT: Delegate Henderson.

20 DELEGATE HENDERSON: Would this prevent a judge
21 from serving on the board of Johns Hopkins Medical School

1 for example or Morgan College any educational institution
2 of that sort? Goucher College? I have know judges who
3 served on all three.

4 THE PRESIDENT: Delegate Carson.

5 DELEGATE CARSON: I do, too. It is not my in-
6 tention to preclude a judge from serving on any of those
7 institutions. I believe the amendment would have the effect
8 of permitting a judge to serve on any or all of those in-
9 stitutions. I may add that many judges that I know do serve
10 with similar institutions at this time and do very fine jobs
11 on those institutions.

12 THE PRESIDENT: Delegate Dulany.

13 DELEGATE DULANY: I would like to ask Delegate
14 Carson a question also.

15 THE PRESIDENT: Delegate Carson, would you take
16 the floor to yield to a question?

17 DELEGATE CARSON: Yes, sir.

18 THE PRESIDENT: Delegate Dulany.

19 DELEGATE DULANY: Aren't there serious questions
20 as to whether or not this would cover all religious insti-
21 tutions for example?

1 THE PRESIDENT: Delegate Carson.

2 DELEGATE CARSON: Delegate Dulany, I have in-
3 dicated if the word "charitable" was not broad enough I would
4 have no objection to another word being placed in there by
5 Style. The word "charitable" has to be broad enough to in-
6 clude a religious institution, or scientific or an institution
7 of learning as long as they are charitable in nature.

8 THE PRESIDENT: Delegate Dulany.

9 DELEGATE DULANY: How about professional
10 organizations and social clubs?

11 THE PRESIDENT: Delegate Carson.

12 DELEGATE CARSON: They present much closer cases.
13 I don't think that either amendment, Delegate Harkness's or
14 mine, will preclude a person from belonging to a professional
15 association in any way, so I don't think that would be in-
16 volved. Social clubs, I doubt that either would be included.

17 THE PRESIDENT: Delegate Dulany.

18 DELEGATE DULANY: We don't know what we are doing.
19 We are trying to put something in the Constitution that no one
20 knows what it means. Is that correct?

21 THE PRESIDENT: Delegate Carson.

1 DELEGATE CARSON: If you are correct, I suggest
2 that the same difficulty happens with regard to Delegate
3 Harkness's original motion as happens with my amendment. I
4 think my amendment clarifies it to an extent.

5 THE PRESIDENT: Delegate Stern.

6 DELEGATE STERN: I think that Delegate Carson's
7 motion goes more to serve Delegate Harkness's purposes be-
8 cause a mutual savings and loan or a mutual insurance company
9 has no profit so to speak and under that method it would not
10 be a business operated for a profit and a judge could be on
11 a mutual savings and loan and we would be cut out, so under
12 charitable it would serve more to Governor Harkness's pur-
13 poses.

14 THE PRESIDENT: Are you ready for the question?
15 The clerk will ring the quorum bell.

16 The question arises on Amendment 14 not yet
17 printed. The amendment would amend Section 5.25 as amended
18 by Amendment 13 by deleting from the language added by Amend-
19 ment 13 in lines 6 and 7 everything after the word "any" and
20 inserting in lieu thereof the words "noncharitable enter-
21 prise".

1 A vote Aye is a vote in favor of Amendment 14. A
2 vote No is a vote against. Cast your vote.

3 (Whereupon, a rollcall vote was taken.)

4 Has every delegate voted? Does any delegate de-
5 sire to change his vote? The Clerk will record the vote.

6 Delegate James Clark votes No.

7 There being 46 votes in the affirmative and 62 in
8 the negative, the motion is lost and Amendment 14 is re-
9 jected.

10 The Chair has no further amendments. Question now
11 arises on the adoption on second reading of Committee
12 Recommendation JB-1 as amended. The Clerk will ring the
13 quorum bell.

14 The question arises on the adoption of Committee
15 Recommendation JB-1 as amended. A vote Aye is a vote in
16 favor of the adoption on second reading of Committee
17 Recommendation JB-1 as amended. A vote No is a vote against.
18 Cast your vote.

19 (Whereupon, a rollcall vote was taken.)

20 THE PRESIDENT: Has every delegate voted? Does
21 any delegate desire to change his vote? The Clerk will record

1 the vote.

2 There being 92 votes in the affirmative and 18 in
3 the negative, the motion is carried and Committee
4 Recommendation JB-1 as amended is adopted on second reading.

5 We have just a few other things to take care of.
6 Committee reports.

7 Report of the Committee on Style, Drafting, and
8 Arrangement, S&D-11.

9 MR. QUILLEN: "Committee on Style, Drafting, and
10 Arrangement Report No. S&D-11. This report covers matters
11 in Committee of the Whole reports Nos. 5 and 16, a report
12 concerning Committee Recommendations Nos. 1 and E-1 and S&E-2."

13 THE PRESIDENT: Recommendation of the Committee
14 on Style S&D-11 is referred to the Committee on Calendar
15 and Agenda.

16 This report has been printed. You should have it
17 on your desk. Will you please turn to the attachment which
18 is a committee recommendation and make a correction. It is
19 labeled incorrectly as Committee Recommendation No. S&D-11.
20 It should read Committee Recommendation No. S&E-1 and E-2.
21 Will you please note that on your copies?

1 You should now have and I wish you would check
2 carefully to make sure you have the tan copies of committee
3 reports S&D-9, S&D-10, and S&D-11, all three distributed
4 within the past few hours. These are the three reports which
5 will be on the calendar for action on second reading tomorrow
6 afternoon.

7 Will you please keep in mind the provisions of the
8 rule as to the preparation of amendments and as to limitations
9 on debate. We hope to conclude consideration of all three
10 of these recommendations at the session tomorrow afternoon
11 and tomorrow evening. If the Committee on Style concludes
12 its work in time tomorrow morning, and I think it will,
13 **there** will be read across the desk and distributed tomorrow
14 afternoon the reports of the Committee on Style with respect
15 to committee recommendations LB-1, LB-2, and LB-3. This will
16 be the entire article on the Legislative Branch.

17 Also the Committee on Style's report with respect
18 to Committee Recommendations EB-1 and EB-2. This will be
19 the entire article on the Executive Branch.

20 Also the Committee on Style's report on the
21 remaining recommendations of the Committee on General

Provisions.

These remaining reports, if distributed tomorrow as I hope they will be, will be on the calendar for action on second reading on Friday when we have concluded second reading on these six groups of reports, three tomorrow and three Friday night, but if not, then on Saturday morning, then we will have concluded second reading on everything depending upon whether the schedule of transitional provisions and legislation can be proposed through committee and in your hands by Friday. It is planned to present these to the Convention for action on either Tuesday or Wednesday of next week. Hopefully on Tuesday -- I am sorry, on Wednesday.

On Tuesday, we would probably have to have a session to consider resolutions of several committees which have not yet been acted upon. This is the Committee on Public Information and the Committee on Rules and Convention Budget. I would imagine that this session would be a relatively short session, not afternoon and evening but probably only afternoon.

If we have concluded that on Tuesday and concluded the transitional provisions in the schedule on legislation in

1 two sessions, I would hope the Convention would recess on
2 Thursday of next week and return on Friday for final vote
3 on third reading of the entire Constitution and all schedules.
4 If this is accomplished, then I would hope that we could have
5 the ceremony for the signing of the final document -- the
6 official Constitution -- which we hope to be able to arrange
7 to have signed by all delegates on either Tuesday or
8 Wednesday of the following week depending upon how quickly
9 we can finish next week and how quickly we can get the final
10 documents printed, bound and ready for signature. This would
11 mean that the signing ceremony would be either on the 9th or
12 10th.

13 You will recall that you have an invitation from
14 the Governor for a buffet supper together with your spouses
15 on the evening of the 9th. We are trying to arrange the
16 signing ceremony for that day, then, if not, for the following
17 day. Now obviously whether we maintain this schedule depends
18 upon how briskly we can move to a consideration of the re-
19 maining committee recommendations.

20 May I suggest to you that the fact that we are not
21 having a session this evening or tomorrow morning gives the

1 opportunity to all delegates save only those working on the
2 Committee on Style and those working on the Transitional
3 Provisions and possibly the General Provisions and Rules
4 Committee an opportunity to study carefully the recommenda-
5 tions received this afternoon, make up your minds about the
6 amendments and have them processed in time for ample con-
7 sideration tomorrow. If this is done, every effort will be
8 made to have the amendments distributed to the desks of
9 delegates in advance so that you will know exactly what is to
10 be offered in the way of amendments for the matters under
11 consideration.

12 Are there any questions as to this procedure?

13 If not, are there any announcements by committee
14 chairmen? Delegate Kiefer.

15 DELEGATE KIEFER: Mr. President, we received a
16 schedule of picture taking by committees, and the Committee
17 on **Personal** Rights and Preamble was scheduled for 10 o'clock
18 tomorrow morning. We have arranged to change this to until
19 2:30 tomorrow afternoon. I understand the Convention will
20 not convene until 3 o'clock tomorrow and Mr. Moore has
21 arranged for this picture of the Personal Rights and Preamble

1 Committee to be taken in the committee room.

2 THE PRESIDENT: Delegate Sherbow.

3 DELEGATE SHERBOW: I would like to ask the members
4 of the Committee on Finance and Taxation to meet in our
5 regular committee room tomorrow at 2 o'clock. We will not
6 be there for the purpose of taking pictures as ours has
7 already been taken by photographers several weeks ago, but
8 please be at this meeting tomorrow at 2 o'clock.

9 THE PRESIDENT: Delegate Koss.

10 DELEGATE KOSS: Mr. President, is it correct that
11 we will meet tomorrow at 3?

12 THE PRESIDENT: That is correct.

13 DELEGATE KOSS: I would like to make two announce-
14 ments. One is that the picture previously scheduled will
15 have to be rescheduled in consideration of the weather we
16 expect tomorrow except that I would like to announce that
17 there will be a meeting of the Committee on Suffrage and
18 Elections at Shaw House.

19 THE PRESIDENT: Delegate Morgan.

20 DELEGATE MORGAN: Mr. President, the Committee on
21 the Executive Branch will meet tomorrow at 2 o'clock for the

1 purpose of considering a few clarifying amendments on second
2 reading.

3 THE PRESIDENT: Delegate Gallagher.

4 DELEGATE GALLAGHER: Mr. President, I will
5 announce a new time for the taking of the photographs on the
6 Committee on Legislative Branch. It will not be tomorrow.

7 THE PRESIDENT: Any other announcements by
8 committee chairmen?

9 Delegate Dulany.

10 DELEGATE DULANY: Mr. Chairman, the Committee on
11 Public Information will meet tomorrow at 1 o'clock.

12 THE PRESIDENT: Delegate Penniman.

13 DELEGATE PENNIMAN: The Committee on Style will
14 meet at 9 o'clock.

15 THE PRESIDENT: When, tonight or tomorrow
16 morning?

17 DELEGATE PENNIMAN: Tonight. They know it will be
18 tonight.

19 THE PRESIDENT: Any other announcements by
20 committee chairmen?

21 Delegate Singer.

1 DELEGATE SINGER: Turnabout is fair play. I would
2 like to announce the birthday of the Chairman of the
3 Committee on Calendary and Agenda, Delegate Powers. It is
4 an unnumbered birthday.

5 (Applause.)

6 THE PRESIDENT: Any other announcements by
7 committee chairmen? Let me mention one thing that I over-
8 looked in outlining the schedule for the next ten days. The
9 fact that there are days when there may be a recess in the
10 activities of the convention as a whole should not be
11 accepted by you too literally because they are there for two
12 reasons: One, to provide a follow-up period in case our
13 estimates of time for other matters is too little, and,
14 secondly, because of the necessity of having time for the
15 Committee on Style and Printing.

16 I am sure as you realize as we approach the end
17 of the Convention it is more than ever important that every
18 delegate be here at all times. The votes on second reading
19 certainly should reflect the views of the entire Convention.

20 Any other announcements by other delegates?

21 Any delegates not present at the rollcall may

1 indicate their presence on supplemental rollcall. The Clerk
2 will record the supplemental rollcall.

3 The Clerk will record Delegate Bothe as present.

4 The Chair recognizes Delegate Powers.

5 DELEGATE POWERS: Mr. President, I move that we
6 adjourn until 3 p.m. tomorrow.

7 THE PRESIDENT: Don't let the snow delay you.

8 All in favor signify by saying Aye; contrary, No.

9 (Chorus of Ayes.)

10 THE PRESIDENT: The Ayes have it and so ordered.

11 (Whereupon, at 7:50 p.m., the Convention recessed
12 until Thursday, December 28, 1967, at 3 p.m.)

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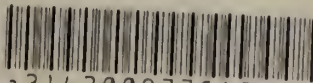
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